DE JURE MARITIMO ET NAVALI: OR A TREATISE OF AFFAIRS MARITIME, AND OF COMMERCE.

In TWO VOLUMES.

VOL. II.

The NINTH EDITION, with many valuable Additions.

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CHAP. VI.

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I. SHIPS being freighted and at Sea, are often subject to Storms and other Accidents, in which, by the antient Laws and Customs *Leg. Rhod. de jact.*

toms of the Sea, in *extreme Neceſſity*, the *Goods*, *Wares*, *Guns*, *or whatſoever elſe* ſhall be thought *fit*, may in ſuch Extremity be flung over-board; but then the Maſter ought to conſult with his Mariners, who if they conſent not, and yet the Storm and Danger continues, the Maſter may command, notwithſtanding, the caſting over-board what he ſhall judge moſt fitting for the common Safety of the reſt. So likewiſe Goods coming from infected Towns or Places may be caſt over-board; and if an Action be brought at *Common Law*, the Defendant may juſtify the ſame by pleading the ſpecial Matter.

Bracton, lib. 2. fol. 41. b. n. 3.

49 E. 3. fol. 15.

If there be a *Super-Cargo*, a Requeſt ought to be made to him to begin firſt; but if he refuſes, the Mariners may proceed.

Leg. Oleron, cap. 8.

II. If the Ship ſo fortunes as to out-weather the Storm, and in Safety arrives at her Port of Diſcharge, the Maſter, and moſt of the Crew, muſt ſwear that the Goods were caſt over, for no other Cauſe but purely for the *Safety of the Ship and Lading*. The Cuſtom of clearing of that Point, varies according to the ſeveral Countries or Places they arrive at.

Leg. Conſolat. del Mare.

Leg. Wiſbicenſ. Art. 38, 39.

Where Goods are laden above the *Overlope*, or forbidden Goods be tranſported; if ſuch Goods happen to be the Cauſe of any Danger or Damage, the Maſter ſhall bear the Loſs; alſo he may be proſecuted Criminally.

III. King *William the Conqueror*, and *Henry the Firſt*, made and ratified this Law concerning Goods caſt over-board by Mariners in a Storm, in Imitation of the antient *Rhodian Law*, *De jact.*

Leges Guliel. 1. & H. 1. c. 98. de pactis ad legem Rhodiam

Si ergo jecero res tuas de Navi ob metum mortis de hoc non potes me implacitare, nam licet aliter damnum inferre ob metum mortis quando periculum

Selden ad Eadmerum, & Notæ & Spicilegium, f. 183.

riculum evadere non poteſt. Et ſi de hoc me meſces, qd' ob metum mortis nil feciſſe de comeſpriorari. Et ea quæ in navi reſtant dividantur in communi ſecundum catalla, & ſi quis jecerit catalla extra navim quando neceſſitas non exegerit, ea reſtituat. Weelock de Priſ. Anglorum legibus, fol 167.

IV. The Ship arriving in Safety, the remainder muſt come into the *Average*, not only thoſe Goods which pay Freight, but all thoſe that have obtained Safety and Preſervation by ſuch *Ejection*; even Money, Jewels and Clothes, and ſuch like, are not exempted. *Leg.* 1. & 2. *ad leg. Rhod.* & *leg. Oleron.*

But thoſe Things which are borne upon a Man's Body, Victuals, and the like, put on Ship-board to be ſpent, are totally excluded from the Contribution.

In our Time, we do not remember ever to have met with any Regulation of a general Average, where the Apparel and Jewels of Paſſengers were brought into the Contribution, as it is a common Rule that what pays no Freight pays no Average.——It is cuſtomary in *London*, and moſt other Countries, for the Preſervation of whatever Gold, Silver or Jewels pay Freight in Merchant Ships, to contribute to Jettiſon for their full Value; for the Maſters being obliged by all Sea Laws to throw out, in caſe of Need, what is heavieſt and of leaſt Value, and the Worth of ſuch precious Commodities being known, the Care of them will be increaſed in Proportion to their Worth, to prevent their being thrown over-board, promiſcuouſly with other things: And hence their Preſervation redounds to the common Benefit. There is a Difference, nevertheleſs, when theſe rich Wares come by King's Ships, or Packet Boats, as ſuch Veſſels never pay nor receive any Average. The Reaſon is; in Goods belonging to his Ma-

jesty, all his Subjects in general are concerned; wherefore for any particular Loss of them no particular Contribution is necessary, because it is supplied by the general Contribution of the whole Community. *Mag. Insur.* 62, 63.

Leg. Wisbicens. Art. 20, 21. The Master ought to be careful, that only those things of the *least Value* and *greatest Weight* be flung over-board.

Johannes Lacinius, l 2. *c.* 7. *de Jactu, &* 8. *de Contributione.* In the rating of Goods by way of Contribution, this Order is observed: If they chance to be cast over-board before half the Voyage be performed, then they are to be esteemed at the Price they cost; if after, then at the Price as the rest, or the like, shall be sold at the Place of Discharge.

The Sea Laws of trading Countries differ greatly in fixing the Prices, at which Goods thrown over-board shall be made good, and for what Value those saved are to contribute. According to the old Laws in the *Consolato del Mare, Cap.* 95. the Statutes of *Genoa, Lib.* 4. *Cap.* 17. the Ordinances of *Rotterdam, Stockholm* and *Copenhagen,* if the Accident which occasioned the general Average happened before half the Voyage was performed, the Jettison is to be estimated at the Price it cost; but if after, then at the Price which the rest, or such like Goods shall be sold for at the Place of Discharge, Freights, Duties, and ordinary Charges deducted. But the new Ordinance of *Amsterdam,* in 1744, seems to differ something from this Custom, saying, that only in Cases of Detentions and Ransoms, the Contribution shall be made in those two different Manners of Valuation. The Ordinance of *Antwerp,* in 1563, by *Philip* 2. the *Recapilation de las Leyes de Indias:* the old Statutes

Statutes of *Hamburgh*, of 1603, the Ordinances of *Lewis* XIV. and of *Conigſburgh*, all agree, that the Goods ſaved and loſt ſhall be rated at the Market Price which thoſe ſaved ſell for; and a Contribution be made accordingly, after deducting Freight and Charges. But the new Ordinance of *Hamburgh*, in 1731, deviates from their former Statutes in this Particular, that in Caſes of general Average, the Goods ſhall be eſtimated according to their Invoice, with the Addition of all Charges except Premium of Inſurance. Now this Difference naturally gives riſe to the following Queſtion, *viz.* which is the juſteſt way, to reckon the Goods according to their Value at the Place they came from, or according to their Value at the Place where they are landed? In anſwer, we think there is no manner of Doubt, but that if the Ship arrived in Safety at her deſtined Port, both the Goods thrown over-board, and thoſe delivered, ought to be valued at the Price they might have yielded, or did yield there, whether the Jettiſon was made before they came half the way, or after: For if the Goods ſaved by this Jettiſon arrived at the Place they were deſtined for, and there produced double what they coſt, it would be unreaſonable, that one half of ſuch Produce ſhould contribute nothing to what was caſt away: Nor would it, on the contrary, be reaſonable to make the Goods ſaved (if they came to a loſing Market) pay for more than they produced; or ſuppoſe they were ſuch as had ſuffered by their own periſhable Nature, what reaſon could there be, to make them contribute to the Value of their Coſt? It appears by *Malynes's Lex Mercatoria*, *Cap.* 26, that this Diſtinction

tinction was likewiſe obſerved in *England* in 1622, (the Time in which he wrote) of rating the Goods at prime Coſt, if the Jettiſon happened before half the Voyage was performed; and if after, at the Price that the reſt, or like Goods, ſold for at the Place of Diſcharge. An Inſtance happened lately, wherein the Concerned agreed, that the Goods ſaved, and thoſe thrown over-board, ſhould be rated at firſt Coſt. As there is no Law in *England* that poſitively directs what Method is to be obſerved in theſe Caſes, the Inſurers, as well as the Inſured, are bound by the Determination of Referees. *Mag. Inſur.* 59.

The Perſon (whoſe Goods have been caſt) is to be careful to have the ſame eſtimated before the Ship do diſcharge, wherein the Maſter ought to be Aſſiſtant.

Average, in the Merchants Law, is uſed or taken for a certain Contribution, that Merchants and others do proportionably make towards their Loſſes who have their Goods caſt into the Sea for the Safeguard of the Ship, or of the Goods and Lives of them in the Ship, in the time of Tempeſt; and this Contribution ſeems to be ſo called, becauſe it is proportioned after the Rate of every Man's Average or Goods carried. It is derived from the Word *Averia, Cattle.*

Whatever the Maſter of a Ship in Diſtreſs, with the Advice of his Officers and Sailors, deliberately reſolves to do for the Preſervation of the whole, in cutting away Maſts or Cables, or in throwing Goods over-board to lighten his Veſſel, which is what is meant by Jettiſon or Jetſon, is in all Places permitted to be brought into or groſs Average; in which all concerned in Ship, Freight and Cargo,

Cargo, are to bear a proportionable Part of what was ſo ſacrificed for the common Good; and it muſt be made good by the Inſurers in ſuch Proportions as they have underwrote. *Mag. Inſur.* 55. *Sect.* 53.

Goods are ſhipped in *England*, and a Tempeſt ariſeth, the Paſſengers, for ſaving their Lives, caſt them over-board, and another *Engliſh* Ship takes them, the Owners bring *Trover*, it lies becauſe delivered upon the Land. 2 *Rolle's* Rep. 498. *Caps v. Tooker.*

It is lawful for Paſſengers to caſt Goods over-board out of a Ferry-boat, in Caſe of a Tempeſt, for Preſervation of their Lives: So if the Ferryman ſurcharge the Boat with Goods, the Owners of the Goods ſhall have their Remedy againſt the Ferryman in this Caſe of a Surcharge, but not in the other Caſe. 12 *Coke* 63. 2 *Bulſtr.* 280.

V. As this Law doth take care that this common Calamity ſhould be borne by all the Parties intereſted by a general Contribution, ſo the *Common Law* takes notice of the Misfortune, and makes Proviſion to indemnify the Maſter; and therefore if the Party, Owner of ſuch *ejected* Goods, ſhall bring an Action againſt the Maſter or Owners of the Veſſel, the Defendant may plead the ſpecial Matter, and the ſame ſhall bar the Plaintiff. 2 *Bulſtr.* 280. *Bird v. Aſtoot.* 12 *Coke* 63. *Mouſe's* Caſe 1 *Rol.* Rep. 79.

VI. But if the Ship's Gear or Apparel be loſt by Storm, the ſame is not within the *Average*, but is accounted like unto a Workman breaking or ſpoiling his Tools; except in the avoiding of a Danger, as the flinging the *Maſt* over-board, or the ſlipping the *Tow-Anchor* or *Boat*. *Leg.* 1. *ff. de exercit. action. L. amiſſæ & Oleron.*

Goods brought ſecretly in the Ship againſt the Maſter or Purſer's Knowledge, if ejected, no Contribution is to be had.

Leg. 1. *del. Mer. exempt. & leg. Si non ſortem de cond. in de.*

VII. As the *Common Law* looks upon the Goods and Cargo as a Pawn or Pledge for the Freight, ſo the *Marine Law* looks upon them likewiſe as a Security for the anſwering the *Average* and *Contribution*, and that the Maſter ought not to deliver the Goods till the Contribution is ſettled, the ſame being tacitly obliged for the one as well as the other. *Ad Leg. Rhod. l.* 2. *Si non conſervatis.*

Leg. Navis 4. *ad Leg. Rhod.* And *Vinius's* Commentary *fol.* 235.

VIII. If through the rifling of the Ship, or the caſting or unlightning the Ship, any of the remaining Goods are ſpoiled, either with Wet or otherwiſe, the ſame muſt come into the Contribution for ſo much as they are made worſe.

Leg. 9. §. 3. *ad exhibit.*

IX. If it falls out that a Ship entering into a Port or Channel, cannot make way, and there be a lightning or diſburdening of the Ship, then the Contribution falls two Parts to the Lading, and one third to the Ship, except the Ship ſurpaſs in value the Lading, or that there is ſome bad Quality in the Ship itſelf.

L. 1. verſ. *quod convenit depoſ.*

But to prevent that ambiguous Queſtion, if the Party covenants that the Goods ſhall be delivered at the Port covenanted and appointed, then Condition makes Law.

So for the *Pilot's* Fee and riſing of the Ship off Ground when there is no Fault in the Maſter.

Leg. quemadmodum parag. Si navis ad leg. Aquiliæ.

X. If two Ships happen to encounter and croſs each other, and the Crew ſwear their Innocency, Contribution muſt be made by a juſt Equality; but if one periſhes, as there can be no Proportion of the Loſs, ſo no Contribution. The Reaſon given is, for that otherwiſe a Skipper might on purpoſe ſet an old weak Ship againſt a ſtrong Ship, and by that

that Means hedge himself into a Contribution and Recompence. However, this bars not the Owners from bringing their Action against the negligent Master, by which Means he may *recoop* himself in Damage, if it happens at Sea, the Action by the *Civil Law* is called *Legis Aquiliæ*. *Fod. leg.* 18. *H.* 6. *num.* 52. 3 *Inst.* 146. *Goodwin v. Tompkins, Noy* 148.

If such a Misfortune happens in the Night at Sea, the Party, if he will compleatly arm himself for his Recovery, ought to prove, that he made out Light or Fire, or otherways gave Notice by crying or calling out.

XI. If it falls out in the Ship or Vessel, by the indiscreet Stowing or Lading thereof above the Birth-mark, that such *Ejection* happened, in that Case it has been used by the Marine Laws no Contribution to be made, but Satisfaction is to be answered by the Ship, Master, or Owners. *Lust Sernus.* §. 27. *& Si* 23. *ad leg. Aquil.*

If Salt or Corn be laid loose, or in an heap by divers Persons in one Ship, without Distinction, and the Master delivers to any of them their due Share or Quantity; but before the rest receive their Share or Measure, the remaining Salt or Corn washes or loses, those that had the good Fortune to have their Shares, shall enjoy it without any Contribution to the other Partners. *Lex Mercat.* 110.

XII. If to avoid the Danger of a Storm, the Master cuts down the Masts and Sails, and they falling into the Sea, are lost, this Damage is to be made good by Ship and Lading *pro rata*: Otherwise if the Case happens by Storm or other Casualties. *Ad leg. Rhod. leg.* 2. §. *Si Conservatis.*

No Contribution is to be paid in Case one Ship strike against another whereby Damage happens, but full Satisfaction is to be answered the Merchant in Case of Fault or Miscarriage

carriage in either; or an equal Diviſion of the Damage, in Caſe it happens by a *Caſualty*, as above.

F. de leg. Rhod. leg. navis · conſt. leg. navis ad leg. Rhod. de jactu. Moor 297.

If a *Lighter* or *Skiff*, or the Ship's Boat, into which part of the Cargo is unladen for the lightning of the Ship, periſh, and the Ship be preſerved, in that Caſe Contribution is to be made; but if the Ship be caſt away, and the Lighter, Boat, or Skiff be preſerved, there no Contribution or Average is to be had, it being a Rule, *No Contribution but where the Ship arrives in Safety.*

If the Ship after having made Jettiſon, or cut away her Cables, Maſts, &c. at one Place, is ſtranded at another, each concerned muſt bear his own Loſs, or remain poſſeſſed of what is ſaved of his Property. For Inſtance: A Maſter bound for *Cadiz*, is obliged by a Storm in the *Downs* to cut away two Cables, and get to Sea; by which Means he cleared his Ship from the great Danger he was there expoſed to: But he afterwards had the Miſfortune to run his Ship aſhore near *Plymouth*, where the major part of his Cargo was ſaved. In this Caſe the Owners have no Right to demand, that the Proprietors of the Goods ſaved ſhall contribute towards the Cables and Anchors left in the *Downs*, notwithſtanding the imminent Danger of loſing the Ship on the *Goodwin* Sands (where there was no probability that any thing could be ſaved) which could only be guarded againſt by the Method taken of cutting away the two Cables. From hence it follows, that if nothing had been ſaved of the Cargo, and the Cables and Anchors had afterwards been recovered, they would remain the ſole Property of the Owners of the Ship, at leaſt till the Proprietors

of

of the Goods had actually paid for, or contributed towards the Loſs of theſe Cables and Anchors. This is an old Law, and the Cuſtom of many Places (1). If a deep loaden Ship be obliged to take out a part of her Cargo, previous to her paſſing ſome Shoals or Flats, which, without ſuch Lightning, hinder her getting to her deſtined Port, and the Lighters or Boats, in which the Goods of ſuch Cargo are put, ſhould periſh, the Owners of the Goods that remain are to bear an equal Proportion of the Loſs; but if the Ship ſhould be loſt, and the Lighters ſaved, the Owners of the Goods ſo preſerved ſhall not only remain poſſeſſed of thoſe Goods, but alſo ſhall contribute nothing towards the Loſs of the Ship, and what was in her. This Difference is founded on this, that lightning of this Ship was in Conſequence of a deliberate and voluntary Determination, and for the Good of the whole, whereas the Lighters being ſaved, and the Ship loſt, was owing to an Accident, no ways proceeding from a Regard to the whole, but a Caſe ſimilar to the ſaving Goods lying neareſt at hand when a Ship is run aſhore.

Let us go ſtill farther and ſuppoſe, that a Ship running on a Bank, throws overboard all her heavy Stores, and Part of her Cargo, by which Jettiſon ſhe gets clear, and returns to Sea, yet proves ſo leaky, that ſhe is obliged to make for, and take Shelter in the next Harbour, where, upon Examination, ſhe is found in ſo bad a Condition as not to be re-

(1) Laws of *Wiſby*, Art. 55. Statutes of *Hamburgh* in 1603. *Malynes's Lex Mercat.* 1622. *Cap.* 25. Ordinance of *Antwerp* in 1563. Ordinance of *France* in 1681. Ordinance of *Rotterdam* in 1721.

paired,

paired, and therefore is condemned as unfit to proceed on the Voyage. In this Caſe, notwithſtanding her Loſs proceeds from her having been aſhore, yet as ſhe got clear by the aforeſaid Jettiſon, and the remainder of the Cargo eſcaped, and arrived ſafe in Harbour, that which was ſo ſaved muſt contribute to the Loſs of what was thrown overboard. But yet whatever Damage the Ship ſuſtained by her running aground, or the Damage or Loſs any particular Goods ſuffered by this unhappy Accident, muſt be borne by the Ship's Owners, and by the Owners of the Goods, without any Pretence of Indemnification from the Cargo ſaved, their Redreſs being only againſt Inſurers. *Mag. Inſur.* 57.

In the Collection intitled *Conſolato del Mare*, which contains ſome old Laws of *Barcelona*, partly taken, as *Verwer* ſhews, from thoſe of *Wiſby*, it is ſaid, *Cap.* 94. "That in Caſe of a Jettiſon, the Ship ſhall contribute for half of its Value: But (*Cap.* 96.) if the Maſter receives Freight for his whole Cargo, the ſame ſhall be included in the general Contribution."

In the Ordinance of *Philip* II. made at *Antwerp*, 1563, it is ſaid, "That the Owners of the Cargo ſhall have the Option to make the Ship contribute either for her real Value, or for her whole contracted Freight;" which, as *Verwer* affirms in his Annotations upon this Ordinance, *p.* 118. hath been practiſed in the Northern Parts of *Holland*, ever ſince the moſt antient of their own Sea Laws have been known, which are the Decrees or Judgments of the City of *Dam* or *Damme*, collected according to the afore-mentioned Author's Conjecture, before the Year 1300, and

and ſtill in Uſe, as appears by the Ordinance of *Rotterdam*.

By the *Recopilacion de Leyes de las Indias in Spain*, and the Statutes of *Genoa*, the Ship contributes both for the whole of her Value and Freight. At *Leghorn* the Cuſtom is, that the Ship ſhall contribute for one half of her Value, and one third of her Freight.

By the Ordinance of *Lewis* XIV. both Ship and Freight are to contribute for one half.

The Ordinances of *Coningsberg*, *Hamburg*, and *Copenhagen*, all agree, that the Ship is to contribute for the whole of her Value and Freight; which Value is well explained by the ſaid Ordinance of *Hamburgh*, which directs, that the Value of the Ship ſhall be no other than ſhe was really worth in the Condition ſhe arrived; and that from the Freight a Deduction ſhall be made of the Men's Wages, Pilotage, and ſuch other Charges, as are diſtinguiſhed there by the Denomination of *petty, ordinary, or common Average*, of which it is cuſtomary every where for the Cargo to bear two thirds, and the Ship one. The Difference of the Ordinances of ſeveral States in the Manner of ſettling the Ship's Contribution, is eaſily reconciled; for it proceeds from the ſame Grounds, *viz.* the Impoſſibility of employing a Ship in any Voyage without Wear and Tear, and conſequently loſing of that Value ſhe had when ſhe commenced it; and the Suppoſition that one half, or one third of her Freight, would be expended in paying Mens Wages and other Charges. The above mentioned Law of *France*, that the Ship ſhall contribute for a Moiety of her Freight as well as her Value, is to be underſtood only of the groſs

groſs Freight. The Ordinance of *Conings berg*, mentioned above, is defective both in this Point and the Method of valuing the Veſſels, and wants Explanation. The right and juſt way of calculating is to be found in the laſt named modern Ordinance of *Copenhagen*, which enacts, that the neat Freight, and full Worth of the Ship (after making proper Allowances for what ſhe diminiſhed in Value by the ordinary Courſe of the Voyage, and the extraordinary Accident that occaſioned the general Average) ſhall contribute their Share or Part in a general Average. *Mag. Inſur.* 57.

Leg. Rhod. de jactu, l. 2. *Si navis à Piratis.*

XIII. If a Ship happens to be taken, and the Maſter, to redeem the Ship and Lading out of the Enemy's or Pirate's Hands, promiſes them a certain Sum of Money, for Performance whereof himſelf becomes a Pledge or Captive in the Cuſtody of the Captor; in this Caſe he is to be redeemed at the Coſts and Charges of the Ship and Lading, and Money, if there be any in her, are contributary according to each Man's Intereſt for his Ranſom.

Moor 297. *Hicks verſus Palington.*

So where a Pirate takes part of the Goods to ſpare the reſt, Contribution muſt be paid.

But if a Pirate takes by Violence part of the Goods, the reſt are not ſubject to Average, unleſs the Merchant hath made an expreſs Agreement to pay it after the Ship is robbed.

Grot. de introd. jur. Holl. part 29. *Sueton. jur. Naut.* in the end of chap. 13.

But if part of the Goods are taken by an Enemy, or by Letters of Mart and Reprizal, *è contra.*

So likewiſe in a Storm, if the ſame is done for Preſervation of the remainder,

The Maſter may hypothecate the Ship for his own Redemption. L. *Raymond*'s Rep. 22.

A Ship

A Ship was taken by a *French* Privateer, and the Maſter of her ranſomed her for 1800*l.* (the Maſter having a Share in the Ship) the Mate was carried into *France* as a Hoſtage for this Money. Lord *Chancellor* ſaid, the Ranſom-money muſt be raiſed out of the firſt Profits, notwithſtanding any former Mortgage of the Ship; for if there was a precedent Mortgage, what would have become of the Security if the Ship had not been redeemed: After the Ship was redeemed ſhe performed her intended Voyage, and the Freight-money earned after her Redemption was the firſt Profits ariſing, and out of theſe the Ranſom-money is to be ſatisfied. This was upon Motion. The Lord *Chancellor Cowper* ſaid, the Inſurers always paid part of the Ranſom-money. *Hill.* 7 *Annæ*, in *Chancery*, *Lopes* and *Winter.*

XIV. In Ejectment, the Maſter or Purſer of the Ship ſhall contribute for the Preſervation of the Ship, and alſo the Paſſengers for ſuch Wares as they have in the Ship, be it Pearls, precious Stones, and ſuch like; and Paſſengers that have no Wares or Goods in the Ship, yet in regard they are a burden to the Ship, Eſtimate is to be made of his and their Apparel, Rings, and Jewels, towards a Contribution of the Loſs; and generally all things in the Ship, except the Victualling and Proviſions of the Ship, and the Bodies of Men (unleſs Servants) muſt bear a proportionable Share in the Contribution.

The Eſtimate being made of the Goods loſt and ſaved, the Price is to be ſet down, not for how much they were bought, but how much they might be ſold for at the time when the Ejectment was made; and if any thing be flung into the Sea, and endamaged, and *Peckius ad leg. Rhod. de jact. fol.* 196, 197, 198.

and afterwards is recovered again, yet Contribution is to be made only for the Damage.

XV. Contribution is to be paid for the Pilot's Fee that hath brought a Ship into a Port or Haven for her Safe-guard, (it being not the Place she was designed for) so to raise her off the Ground when there is no Fault in the Master.

Grotius introd. jur. Holl. 329. *Vinius* and *Peckeus* Commentaries on the Laws of *Rhodes*, *fol.* 236.

If a Master of a Ship lets out his Ship to freight, and then receives his Compliment, and afterwards takes in Goods without leave of the Freighters, and a Storm arises at Sea, and part of the Freighters Goods are cast overboard, the remaining Goods are not subject to the Average, but the Master must make good the Loss out of his own Purse.

The Goods which are lost are to be valued, and the Goods saved are to be estimated, which being known, a proportionable Value is to be contributed by the Goods saved, towards Reparation of the Goods *ejected*, or cast over-board.

Locinus, lib. 2. cap. 8, 9, 10, 11.

In which, regard is always had, not to what might be got by the Goods lost, but what the intrinsick Damage is by the loss of the same; the which are not to be estimated what they might have been sold for, as what they cost or were bought for.

The Custom of Places varies this *Modus* of estimating; the which is done by Merchants and Mariners indifferently nominated by the Court.

XVI. But now the Custom is general, the Goods saved and lost are estimated according as the Goods saved were sold for, Freight, and other necessary Charges, being first deducted.

And this, by what we have often seen transacted in such Affairs, seems to be now the prevailing Custom in *England*. 1 *Mag. Insur.* 59.

If

If there were Plate, Jewels, or the like, in a Trunk, Cheſt, Pack or Bale, at the time of their Ejection, if there be a *Super Cargo*, he ought to give Notice, by diſcovering of the ſame to the Maſter or Mariners, otherwiſe he ſhall be anſwered in the Contribution, no more than the bare extrinſick Value appeared to be: But the Aſſurers will hardly fare ſo well. *Ad leg. Rhod. §. ult. Inſtit. de rer. diviſ. & leg. 9. §. ult. de acq. rer. Dom.*

If Contribution ſhall be ſettled, and the Merchant will not agree, the Maſter may detain the Lading, for the ſame is as tacitly obliged to anſwer that as the Freight; and if at the *Common Law* the Merchant ſhould bring an Action, the Defendant ſhall bar him by pleading the ſpecial Matter.

If Goods are caſt over-board, and afterwards are recovered, Contribution ceaſes; ſaving for ſo much as they are damnified and made worſe by reaſon of ſuch Ejectment. *ff. ibid. leg. Navis, §. cum autem.*

Note, Goods caſt over-board to lighten the Ship, make no *Derelict*. 5 *Co.* 107. *b.* *Leg.* 25. *D. de prob. leg. falſus §. Si jactum D. de furt.*

And though ſuch Neceſſity ſeems to ſubject the Lading to Ejectment, to prevent the Ruin and Deſtruction of the Perſons, yet ſome Lading ſeems excepted, and therefore Cannon, and other Inſtruments or Proviſions *conſigned to relieve a City*, ought not to be flung over-board; for in ſuch Caſe the Law impoſeth on every Subject, that he prefer the urgent Service of his Prince, before the Safety of his Life. *Bacon's Max. fol.* 17. *Privilegium non valet contra rempublicam.*

XVII. Goods taken upon the Sea, are of three Sorts. 1. Goods taken by Letters of Mart, by *jus Repriſaliarum*. 2. Taken from Pirates or Sea Rovers; And 3. From profeſſed Enemies. Thoſe Goods that are taken from Pi-

rates, are eſteemed to be the juſt Prize or Prey to any Taker of them, ſo that an Account be given of them to the Admiral. If a Ship or Goods be taken from a profeſſed Enemy, it is to be proceeded in according to the Authority whereby it was taken. But if a Ship or Goods be taken by a profeſſed Enemy, and afterwards they are taken from him, and the ſame Owner claims them, they ought to be reſtored to him; for the Law looks upon theſe Goods as received, not taken, yet with ſome Recompence for them.

Prizes to be divided between the Captors in the Proportion the King ſhall order by Proclamation.

By Stat. 29 *Geo.* 2. *cap.* 34. *Sect.* 1. The Flag-Officers, Commanders, and other Officers, Seamen, Marines, and Soldiers, on board every Ship and Veſſel of War in his Majeſty's Pay, ſhall have the ſole Property of every Ship, Veſſel and Goods, which they take from the 17th of *May* 1756, during the Continuance of this War againſt *France* (being firſt adjudged lawful Prize in any Court of Admiralty in *Great Britain*, or in the Plantations in *America*, or elſewhere) to be divided in ſuch Proportions, and after ſuch manner, as his Majeſty ſhall order by Proclamation.

Judge to finiſh the preparatory Examination, with reſpect to Captures, within five Days.

Monition to be iſſued and executed within three Days after.

By *Sect.* 3. The Judge or Judges of ſuch Court of Admiralty, or other Perſon thereto authorized, ſhall, within five Days after Requeſt, finiſh the uſual preparatory Examination of the Perſons commonly examined in ſuch Caſes, to inquire, whether the Capture be lawful Prize or not; and the uſual Monition ſhall be iſſued by the proper Perſon, and be executed in the uſual Manner, within three Days after requeſt: And in caſe no Claim of ſuch Capture be entered in the uſual Form, and atteſted upon Oath, giving twenty Days Notice

Notice after the Execution of ſuch Monition; or if there be ſuch Claim, and the Claimant give not within five Days Security, to be approved of by ſuch Court of Admiralty, to pay double Coſts to the Captors in caſe the ſame ſo claimed be adjudged lawful Prize; then the Judge of ſuch Court of Admiralty ſhall, upon producing the ſaid Examinations or Copies thereof, and upon producing upon Oath all Papers found in ſuch Captures, or upon Oath that no ſuch Papers were found, immediately proceed to Sentence, either to diſcharge ſuch Capture, or to condemn the ſame; and in caſe ſuch Claim be entered and Security given, and there appear no Occaſion to examine any Witneſſes, other than what be then near, then ſuch Judge ſhall forthwith cauſe ſuch Witneſſes to be examined within ten Days after ſuch Claim made and Security given, and proceed to Sentence; but in caſe upon making ſuch Claim, and the Allegation and Oath thereupon, or the producing ſuch Papers found in ſuch Capture, or upon the ſaid preparatory Examinations it appear doubtful, whether ſuch Capture be lawful Prize or not, and appear neceſſary to have an Examination, upon Pleadings given in by the Parties, and admitted by the Judge, of Witneſſes that are remote, and ſuch Examination be deſired, then the ſaid Judge ſhall forthwith cauſe ſuch Capture to be appraiſed by Perſons to be named by the Parties, and appointed by the Court, and ſworn truly to appraiſe the ſame; for which Purpoſe the ſaid Judge ſhall cauſe the Goods found on board to be unladen, and an Inventory being taken by the Marſhal of the Admiralty,

If no Claim be made within a limited time, or Security given by the Claimant, the Judge to proceed to Sentence.

If Claim be entered and Security given, and Witneſſes be near, Determination to be made within ten Days.

If the Legality of the Capture appear doubtful, and the Parties perſiſt in litigating,

Judge to order the Capture to be appraiſed,

and the Goods to be unloaded and lodged in Warehouſes, and

Inventory taken,

miralty, or his Deputy, to be put into Warehouſes, with ſeparate Locks of the Collector and Comptroller of the Cuſtoms (and where there is no Comptroller, by the Naval Officer) and the Agents of the Captors and Claimants, at the Charge of the Party deſiring the ſame; and ſhall, after ſuch Appraiſement, and within fourteen Days after the making ſuch Claim, take Security from the Claimants, to pay the Captors the Value according to ſuch Appraiſment, in caſe the ſame be adjudged lawful Prize; and Security from the Captors, to pay ſuch Coſts as the Court think proper, in caſe ſuch Ship be not condemned; and after ſuch Securities given, the ſaid Judge ſhall make an interlocutory Order for delivering the ſame to ſuch Claimant, or his Agents, and the ſame ſhall be delivered accordingly.

and upon Security for full Value taken of the Claimant,

and for Coſts of the Captors,

to make Order for Releaſe of Capture to Claimant.

By *Sect.* 4. If any Claimants refuſe to give ſuch Security, the Judge ſhall cauſe the Captors to give Security to be approved of by the Claimants, to pay the Claimants the Value, according to the Appraiſement, in caſe ſuch Capture be adjudged not lawful Prize; and the ſaid Judge ſhall thereupon make an interlocutory Order for the delivering the ſame to the Captors or their Agents.

Claimant refuſing and Captor giving ſuch Security, Judge to make Order for delivery of Prize to Captor.

By *Sect.* 5. All ſuch Captures brought into any of his Majeſty's Colonies in *America*, ſhall, without breaking Bulk, ſtay there, and be under the joint Care of the Collector and Comptroller of the Cuſtoms (or where there is no Comptroller, of the Naval Officers of the Port where brought) and all the Captors and their Agents, ſubject to the Directions of the Court of Admiralty, until either the ſame

Captures to be under the joint Care of the Officers of the Cuſtoms and Captors, till condemned or acquitted there.

ſame by final Sentence be diſcharged or condemned, or that ſuch interlocutary Order as aforeſaid be made for the delivering the ſame; and upon Condemnation ſhall, in caſe the ſame were taken by any ſuch private Ship, be delivered unto the Captors and their Agents, to be by them diſpoſed of as their Goods; and in caſe the ſame were taken by any of his Majeſty's Ships, unto ſuch Perſon, and to be ſo divided and diſpoſed of as his Majeſty ſhall by Proclamation direct.

Upon Condemnation, Prize to be delivered to the Captors.

By *Sect.* 6. If any Judge, or other Officer in any of his Majeſty's Plantations or Dominions Abroad, delay the doing any thing towards condemning or diſcharging any ſuch Capture within the Times herein limited, or as ſoon as the ſame ought to be done according to the meaning of this Act, every ſuch Judge and other Officer ſhall for every ſuch Offence forfeit 500 *l.* one Moiety to his Majeſty, the other Moiety with Coſts, to ſuch Perſon who ſhall inform or ſue for the ſame, in any of the Courts in any of his Majeſty's ſaid Plantations, or in any Court of Record within *Great Britain.*

Judge or other Officer in *America* guilty of Neglect or Delay forfeits 500 *l.* with Coſts.

By *Sect.* 7. There ſhall not be paid unto or among all the Judges and Officers of ſuch Court of Admiralty in any of his Majeſty's Plantations or Dominions Abroad, for the condemning of ſuch Capture above 10 *l.* in caſe ſuch Prize be under the Burthen of 100 tons; nor above 15 *l.* in caſe the ſame be of that or any greater Burthen; and upon Payment of either of the ſaid Sums, as the caſe requires, to the ſaid Judge or Judges, or any of them, to be divided as he or they think fit among the Officers of ſuch Court, ſuch

Fees of Court on Condemnation of Prizes in *America*, for Veſſels under 100 Tons, 10 *l.* for all above 15 *l.*

Upon Payment of the Fees, Judge or Officers liable to the above Penalties for

Neglect or Delay of Duty.

Judges and Officers shall be liable to the Penalties for neglecting to do their respective Duties within the Times herein limited.

Judgment of the Court may be appealed from.

By *Sect.* 8. If any Captors or Claimants rest not satisfied with the Sentence given in such Court of Admiralty, in any of his Majesty's Plantations or Dominions Abroad, it shall be lawful for the Party aggrieved to appeal to the Commissioners, appointed under the Great Seal of *Great Britain*, for having Appeals in Causes of Prizes; such Appeal to be allowed as Appeals to such Commissioners are now allowed from the Court of Admiralty within this Kingdom; so as the same be made within 14 Days after Sentence, and good Security given by the Appellants, that they will effectually prosecute such Appeal, and answer the Condemnation, and pay treble Costs, in case the Sentence of such Court of Admiralty be affirmed.

Appeal to be made within 14 Days after Sentence, and Security to be given to prosecute the same, &c.

Execution of Sentence not to be suspended if the Appellant give Security.

By *Sect.* 9. The Execution of any Sentence so appealed from, shall not be suspended by such Appeal, in case the Party appellate give Security, to be approved of by the Court, in which such Sentence is given, to restore the Ship or Effects concerning which such Sentence is pronounced, or the Value, to the Appellants, in case the Sentence be reversed.

Person who was not in a Party appealing to enter his Claim.

By *Sect.* 10. In case any Person, not a Party in the first Instance of the Cause, interpose an Appeal from a Sentence given in any Admiralty Court, such Person, or his Agent, shall at the same time enter his Claim, otherwise such Appeal shall be void.

Captors breaking Bulk, or imbezzling Effects, to for-

By *Sect.* 11. If any Commander, Officer or others, break Bulk on board, or imbezzle any of the Money, Jewels, Plate, Goods, Tackle, or Apparel of such Prize, he shall forfeit treble

ble the Value of ſuch Money, &c. as he imbezzles; one-third to the uſe of *Greenwich Hoſpital*, and the other two-thirds to him that will ſue for the ſame, by Action of Debt, &c. in any Court of Record in *Great Britain*, in which no Eſſoin ſhall be allowed.

Forfeit treble Value, one-third to *Greenwich Hoſpital*, and the other two to the Proſecutor.

By *Sect.* 12. All Appraiſements and Sales of any Ship or Goods, taken by any of his Majeſty's Ships of War, ſhall be made by Agents appointed in equal numbers by the Flag Officers, Captains, Officers, Ships Companies and others, intitled thereunto, *viz.* if the Flag Officer of any Fleet taking any ſuch Prize (or the Majority of ſuch Flag Officers, if more than one) nominate one or more Agents, then the Captain and Commander, or the Majority of them (if more than one) ſhall nominate the like Number; and all the other Officers, under the Degree of a Captain and Commander, or the major part of them, ſhall alſo nominate the like Number; and all the Crews of the ſeveral Ships Companies of the Fleet, or Ship's Company, and others intitled thereto, or the major part of them, ſhall nominate the ſame Number.

Appraiſements and Sales of Prizes taken by the King's Ships, to be made by the Agents for Officers and Crews.

Regulations concerning Agents.

By *Sect.* 13. Nothing herein ſhall alter any Agreement in Writing, between the Owners, Officers, and Seamen, of any private Ships of War.

Not to extend to Privateers.

By *Sect.* 14. Every Perſon nominated Agent for any Prize, or for receiving the Bounty herein after granted, ſhall exhibit, and cauſe to be regiſtered in the High Court of Admiralty in *Great Britain*, or in the reſpective Courts of Admiralty in *America*, or in any other his Majeſty's Dominions, or elſewhere, where the ſaid Prize is condemned, his Letter of Attorney appointing him Agent;

Agents to exhibit and regiſter their Letters of Attorney in the Court where the Prize ſhall be condemned, on penalty of 500*l*.

and if any Perſon ſo appointed Agent neglect ſo to do for ſix Calendar Months next after Sentence of Condemnation of any Prize, for the Care of which he is appointed Agent, he ſhall forfeit 500 *l.* to be recovered by him who ſhall ſue for the ſame, by Action of Debt, &c. in any Court of Record in *Great Britain*, *America*, or in any other of his Majeſty's Dominions, or elſewhere; in which no Eſſoin, &c. ſhall be allowed. See 33 *Geo.* 2. *c.* 19. *Sect.* 6.

Agent appointed after Condemnation, to regiſter his Letters of Attorney in like manner.

By *Sect.* 15. If any Agent be appointed after any Sentence of Condemnation given, ſuch Agent ſhall, under the aforeſaid Penalty, cauſe to be regiſtered his Letter of Attorney, appointing him Agent within ſix Calendar Months after the Date of the ſaid Letter of Attorney.

Agents to give notice of the time appointed for payment of the Shares.

By *Sect.* 16. After the Sale of ſuch Prize taken by any of his Majeſty's Ships of War, public Notification ſhall be given by the Agents of the Day appointed for the Payment of the ſeveral Shares to the Captors; after which public Notification, if any Man's Share remain in the Hands of the Agents, either belonging to ſuch Men as ſhall be run from his Majeſty's Service, or which be not legally demanded within three Years, then ſuch Shares ſo remaining in the Agents hands, or belonging to ſuch Men as run from his Majeſty's Service, ſhall be paid to the Uſe of *Greenwich Hoſpital*. See 33 *Geo.* 2. *c.* 19. *Sect.* 1.

Shares of run Men, and ſuch as ſhall not be demandedwithin 3 Years, to be paid to *Greenwich Hoſpital*.

Prize Goods not exempted from Cuſtoms.

By *Sect.* 17. Nothing herein ſhall exempt any Ships or Goods taken as Prize, and imported into this Kingdom, or any of his Majeſty's Plantations in *America*, from the Payment of any Cuſtoms or Duties, or from being

ing ſubject to ſuch Regulations to which the ſame are or ſhall be liable by Law.

Prize Ships condemned, to be conſidered as Britiſh built Ships.

By *Sect.* 18. All Prize Ships legally condemned, ſhall be conſidered as *Britiſh* built Ships, and be intitled to all the ſame Priviledges with *Britiſh* Ships, and be ſubject to all the Regulations that *Britiſh* built Ships are ſubject to.

12 *Car.* 2. *c.* 18. *Sect.* 8. The recited Clauſe not to prohibit the Importation in Britiſh built Veſſels, of the Goods mentioned therein, ſo as ſuch Ships are navigated as herein directed.

By *Sect.* 19. During the preſent War with *France*, the 12 *Car.* 2. *c.* 18. *Sect.* 8. ſhall not extend to hinder any Perſon from importing into *Great Britain* or *Ireland*, any of the Goods mentioned in the ſaid Clauſe, in Shipping built in *Great Britain*, *Ireland*, the Iſlands of *Guernſey*, or *Jerſey*, or in any of his Majeſty's Dominions, in *Africa*, *Aſia*, or *America*, or in his Poſſeſſion, ſo as the Maſter and three-fourths of the Mariners navigating ſuch Ship are *Britiſh*, or of the ſame Country, of which the ſaid Goods are the Growth and Manufactures.

Goods imported in Britiſh built Ships, being the Property of Foreigners, to pay Aliens Duty.

By *Sect.* 20. Provided that all Goods imported into *Great Britain* or *Ireland*, in Ships belonging to Foreigners, although *Britiſh* built, ſhall pay Aliens, and all other Duties, as if ſuch Ships were foreign built.

Bounty-money payable to the Captors by the Navy Office, for all Men on board the Enemies Ships of War taken or deſtroyed.

By *Sect.* 21. There ſhall be paid by the Treaſurer of the Navy, upon Bills to be made by the Commiſſioners of the Navy, to be paid according to the Courſe thereof, without Fee, unto the Officers, Seamen, Marines, Soldiers, or others on board any of his Majeſty's Ships of War, or Privateers, in any Action where any Ship of War or Privateer ſhall be taken from the Enemy or deſtroyed, ſince his Majeſty's Declaration of War againſt *France*, dated the 17th of *May*, 1756, 5 *l.* for every Man living on board any Ship ſo taken or deſtroyed,

ſtroyed, at the beginning of the Engagement; the numbers of ſuch Men to be proved by the Oaths of three or more of the chief Officers, or Men belonging to the ſaid Ship of War, or Privateers of the Enemy, at the time of her being taken or deſtroyed, before the Mayor, or other chief Magiſtrate of the Port within any of his Majeſty's Dominions, whereunto any Prize, or Officers or Men of ſuch Ships deſtroyed, be brought, or before the *Britiſh* Conſul, or Vice Conſul, reſiding at any neutral Port to which ſuch Prize, or Officers, or Men, are brought; and the ſaid Mayor, &c. ſhall grant a Certificate thereof, without Fee, directed to the Commiſſioners of the Navy; upon producing which, with an authentic Copy of the Condemnation of ſuch Ship; or if ſuch Ship be deſtroyed, on producing only a Certificate from the Mayor, &c. the Commiſſioners of the Navy, or ſuch Perſon as they appoint, ſhall, according to the Courſe of the Navy, within 15 Days, make out Bills for ſuch Bounty, directed to the Treaſurer of the Navy, payable to, and to be divided amongſt the Officers, Seamen, Marines, and Soldiers on board his Majeſty's Ships of War, in Proportion as by his Majeſty's Proclamation directed; and amongſt the Owners, Officers, and Seamen, of any private Ship of War, in ſuch Proportion as by any Agreement in Writing directed.

Numbers to be aſcertained upon Oath;

and a Certificate to be granted thereof, and produced to the Commiſſioners of the Navy, with Copy of Ships Condemnation; unleſs the Ship be ſunk or deſtroyed.

Dividend to be made according to Proportion ſettled by Proclamation.

By *Sect.* 22. Where ſuch Oath and Certificate cannot be adminiſtered and granted at the firſt Port, whereunto any Prize, or Officers or Men are brought, ſuch Oath ſhall be taken before the Mayor, or other chief Magiſtrate of any Port within any of his Majeſty's Dominions, or before the *Britiſh* Conſul, or Vice Conſul,

Where ſuch Oath and Certificate cannot be made and had at the firſt Port, the ſame may be made and

ſul, reſiding at any neutral Port whereunto any Prize, or Officer or Men are brought (proof being firſt made by Affidavit before ſuch Perſon of the inability of making ſuch Oath, and obtaining ſuch Certificate, at the ſaid firſt Port) and the Mayor, or other chief Magiſtrate, Conſul or Vice Conſul, ſhall thereupon grant ſuch Certificate, which ſhall be effectual.

had at any other Port; Oath being made of ſuch inability at the firſt Port. Certificate granted thereupon to be valid.

By *Sect.* 23. The Bills made out for the Bounty, hereby granted to the Commanders and Men of his Majeſty's Ships of War, ſhall be made payable to ſuch Perſons as be authorized by the Flag Officers, Captains, Officers, Ships Companies, and others intitled thereunto, as before is directed for the appointing Agents for Appraiſements and Sales; the ſeveral Shares of which Captors, if not legally demanded within three Years after public Notification, and alſo of ſuch as run from his Majeſty's Service, ſhall be applied to the uſe of *Greenwich Hoſpital*. And the Bills made out for the Bounty hereby granted to Privateers, ſhall be made payable to ſuch Perſons as be appointed by the Owners, Officers and Seamen, of ſuch Privateer.

Bills for Bounty-money to be paid to Agents, and divided amongſt the Captors. Shares not demanded within 3 Years, to be paid to *Greenwich Hoſpital*. Bounty-money to Privateers, to be divided as agreed.

By *Sect.* 24. If any Ship, or Boat, taken as Prize, or any Goods therein, be proved in the Court of Admiralty, to have belonged to any of his Majeſty's Subjects of *Great Britain* or *Ireland*, or any of the Dominions under his Majeſty's Protection and Obedience, which were before taken by any of his Majeſty's Enemies, and afterwards retaken by any of his Majeſty's Ships of War, or any private Man of War, or other Veſſel under his Majeſty's Protection and Obedience, then ſuch Ships, Boats and Goods, formerly belonging to ſuch his

Ships or Goods belonging to his Majeſty's Subjects taken by the Enemy, and retaken by the King's Ships or Privateers, to be reſtored on paying Salvage in proportion to the

time they were in the Enemy's hands.

his Majeſty's Subjects, ſhall be by Decree of the ſaid Court of Admiralty reſtored to ſuch former Owners; they paying for Salvage, if retaken from the Enemy by one of his Majeſty's Ships of War, one-eighth of the Value of the Ships and Goods; which Salvage ſhall be paid to the Captains, Officers, and Seamen, in the ſaid Man of War, to be divided as is directed, touching the Share of Prizes taken by his Majeſty's Ships of War: And if taken by a Privateer or other Veſſel, before it has been in the Poſſeſſion of the Enemy 24 Hours, one-eighth of the Value; and if it has been in the Poſſeſſion of the Enemy above 24 Hours, and under 48 Hours, a fifth; and if above 48 Hours, and under 96 Hours, a third; and if above 96 Hours, a Moiety; all which Payments to be made without Deduction; and if ſuch Ship ſo retaken appear to have been, after the taking by the Enemy, by them ſet forth as a Man of War, the former Owners to whom the ſame is reſtored ſhall pay for Salvage the Moiety of the Value of the Ship ſo reſtored, without Deduction.

Payment of Salvage to be without Deduction.

If the Ship retaken was fitted out by the Enemy as a Man of War, Owner to pay for Salvage the Moiety of the Value.

By *Sect.* 25. In caſe any Ship or Goods be taken by any Privateer, through Conſent or clandeſtinely, or by Colluſion, ſuch Ship and Goods, and the Ships Tackle and Ammunition of ſuch Privateer, ſhall upon proof in the *Exchequer*, or in the Court of Admiralty, be adjudged good Prize to his Majeſty; and one Moiety ſhall be to the uſe of his Majeſty, and the other Moiety to the uſe of ſuch Perſon who ſhall diſcover and ſue for the ſame; and the Bond given by the Captain of ſuch Privateer ſhall be forfeited to his Majeſty; and in caſe any ſuch Ship or Goods be taken by any Man of War thro' Conſent clandeſtinely, or

Ships or Merchandize taken by Colluſion by Privateers forfeited to his Majeſty, with the Bond; one Moiety to the Crown, the other to the Proſecutor, and if ſo taken by a King's Ship, the Captain to forfeit 1000 *l.*

or by Colluſion of the Commander, ſuch Commander ſhall forfeit 1000 *l.* one Moiety to the uſe of his Majeſty, and the other Moiety to the uſe of ſuch Perſon who ſhall diſcover and ſue for the ſame; to be recovered by Action of Debt, &c. in any Court of Record, wherein no Eſſoin, &c. ſhall be allowed; and ſuch Captain or Officer ſhall forfeit his Employment, and be incapable of any Employment under his Majeſty during ſeven Years; and the ſaid Goods, &c. the Ship, Tackle, Guns, and Ammunition, ſo taken by Colluſion, ſhall be good Prize to his Majeſty.

Run Men forfeit their Share of Prize and Bounty-money

By *Sect.* 26. No Perſon belonging to any of his Majeſty's Ships, or to any Merchant Ship employed in his Majeſty's Service, before or after Notification given by the Agents of the Day appointed for the Payment of the ſeveral Shares to the Captors, ſhall have any Intereſt in the Shares of the ſaid Prize or Bounty-money aforeſaid; but Shares of ſuch Prize and Bounty-money ſhall be paid to the Uſe of *Greenwich Hoſpital.*

To be paid to *Greenwich Hoſpital.*

And if they run after Notification, to loſe what then remains of their Share in the Agent's Hands.

By *Sect.* 27. If any Perſon run away from any Ship after Notification given, he ſhall forfeit ſuch part of his Share of the ſaid Prize and Bounty-money, as remains in the Agent's Hands at the time of his running away.

Agents to account to the Treaſurer of *Greenwich Hoſpital.*

By *Sect.* 28. All Agents and others who ſell any Prize, ſhall, within three Calendar Months after the Day appointed for the firſt Payment to the Captors, tranſmit unto the Treaſurer of *Greenwich Hoſpital*, or ſuch Perſon as he appoints, an Account under the Hand of ſuch Agent, of the Produce of ſuch Prize, with an Account of the Payment of the ſeveral Shares to the Captors, then *bona fide* paid; and all Perſons authorized by this

Act

Act to receive Bills for the Bounty hereby granted, all within three Calendar Months after the Day appointed for the first Payment of such Bills, transmit to the Treasurer of the said Hospital, or his Deputy, an Account under their Hands of the Payment of such Bills; and all Agents, that by virtue of this Act sell any Prize taken by any of his Majesty's Ships, or receive or dispose of any Bills for Bounty, shall, within three Calendar Months after the Expiration of three Years, make out an Account of the Produce of such Prize, and Bills for Bounty, as also of the Payment of the Shares to the Captors, with an Account upon Oath (to be taken before the Treasurer of the said Hospital, or any Person by him authorized in Writing under his Hand and Seal) of all Money then remaining in such Agents Power or Possession, and shall at the same Time deliver to the Treasurer of the said Hospital, or his Deputy, the said Accounts so attested upon Oath, with all such remaining Money, taking from the said Treasurer, or his Deputy, his Acquittance for the same.

Agents neglecting to render such Accounts and Payments, to forfeit 100 *l.* over and above the Money then in their Hands; one-third to the King, and the rest to the *Hospital*.

By *Sect.* 29. All Persons hereby directed to transmit the said Accounts, who neglect so to do within the time limited, or who neglect to pay over all such Money remaining in his Hands after the three Years, to be accounted as aforesaid, shall for every such Offence forfeit 100 *l.* over and above the Money then in such Agents Hands; one-third to his Majesty, and the remaining two-thirds to *Greenwich Hospital*, to be recovered with Costs, by Action of Debt, &c. in any Court of Record, in which no Essoin, &c, shall be allowed.

If there appears any Fraud in such

By *Sect.* 30. If any Fraud be willingly made in such Accounts, every Person thereof convicted,

victed, and his Aiders, ſhall forfeit for every ſuch Offence, over and above the Penalties inflicted by this Act, 100 *l.* one-third to the Uſe of his Majeſty, and one-third to the Uſe of *Greenwich Hoſpital*, and the other third to the Informer, to be recovered with Coſts, by Action of Debt, &c. in any Court of Record, in which no Eſſoin, &c. ſhall be allowed.

Accounts, Perſons concerned to forfeit 100 *l.* extra, one-third to the King, one to the *Hoſpital*, and one to the Proſecutor.

By *Sect.* 31. All Commanders of private Ships of War, or Merchant Ships having Letters of Marque, ſhall, upon their going into any Ports in the Plantations in *America*, be ſubject to the Directions and Penalties in the Laws made there to prevent carrying off Slaves without the Conſent of the Owner, or other Perſons, without a Ticket from the Secretaries Office.

Privateers ſubject to the Laws in Britiſh Colonies in going into the Ports there.

By *Sect.* 32. Nothing in this Act ſhall reſtrain his Majeſty from giving ſuch further Rules to his Courts of Admiralty for the Adjudication of Prizes, as by his Majeſty, with the Advice of his Privy Counſel, ſhall be thought proper.

His Majeſty impowered to give further Rules to the Courts of Admiralty.

By *Sect.* 33. All Offences committed by any Officer or Seaman on board any Privateer, or Merchant Ship taking Letter of Marque, during the preſent War with *France*, ſhall be puniſhed as the like Offences are puniſhable on board his Majeſty's Ships of War.

Offences committed on board Privateers puniſhable as in the King's Ships.

By *Sect.* 34. All Offenders accuſed of ſuch Crimes as are cognizable only by a Court Martial, ſhall be confined on board ſuch Privateer, or Merchant Ship carrying Letter of Marque, on which ſuch Offence is committed, until they arrive in ſome Port in *Great Britain* or *Ireland*, or can meet with ſuch a Number of his Majeſty's Ships of War Abroad, as are ſufficient to make a Court Martial; and upon Application

Crimes cognizable only by a Court Martial, to be tried by a Court Martial.

Application by the Commander of ſuch Privateer, or Merchant Ship carrying Letter of Marque, to the Commiſſioners of the Admiralty, or the Commander in Chief of his Majeſty's ſaid Ships of War Abroad, the ſaid Commiſſioners, or three of them, or ſuch Commander in Chief Abroad, are to call a Court Martial for trying the ſaid Offences.

Regiſters, on Penalty of 500 *l.* to tranſmit yearly to the Treaſurer of *Greenwich Hoſpital*, Copies of all Letters of Attorney regiſtered in their Courts. Judge to affix his Seal thereto. Agents to pay the Expences.

By *Sect.* 35. The Regiſter of every Court of Admiralty in any of his Majeſty's Dominions, ſhall yearly upon the 23d of October, or within three Calendar Months after, tranſcribe Copies of all Letters of Attorney ſo regiſtered in the ſaid Court, to which the Judge of the ſaid Court ſhall affix his Seal of Office, and then the ſaid Regiſter ſhall tranſmit the ſame to the Treaſurer of *Greenwich Hoſpital*, to be there regiſtered, and to be inſpected by any Perſon *gratis*; the charges of which Copies, and affixing the Seal thereto, and tranſmitting the ſame, ſhall be paid by the ſaid Agent at the time of making ſuch Regiſtry; and in caſe ſuch Regiſter neglect to tranſcribe and tranſmit ſuch Copies (any Ship in that time ſailing from ſuch Port to *Great Britain*) he ſhall forfeit 500 *l.* to be recovered by him who will ſue for the ſame, by Action of Debt, &c. in any Court of Record in *Great Britain* or *America*, or in any of his Majeſty's Dominions or elſewhere; in which no Eſſoin &c. ſhall be allowed.

The Copies to be deemed Evidence of the Agency.

By *Sect.* 36. Copies of ſuch Letters of Attorney, and of Tranſcripts under Seal, tranſmitted by the ſaid Regiſters of the Courts of Admiralty, and regiſtered by the Treaſurer of *Greenwich Hoſpital*, ſhall be good Evidence of the Agency of the Perſon to whom ſuch Letter of Attorney is made; and ſhall be

be admitted to be legal Evidence in all Courts of Record of Law or Equity.

Agent not liable to be ſued by run Men in the King's Service, till after three Years,

By *Sect.* 37. No Agent for Prizes or Bounty-money ſhall be liable to be ſued, by any Perſon who is made run from his Majeſty's Service, in the Liſts to be certified of the Names of the Officers, Seamen, Mariners, Soldiers, or others on board any of his Majeſty's Ships at the taking any Prize, until the End of three Months next after the Expiration of three Years limited by this Act, for the claiming of Prizes and Bounty-money, unleſs the Perſon ſo made run before any Action brought, obtain a Certificate of his R being taken off, and the Forfeiture of his Share of ſuch Prizes and Bounty-monies being diſcharged by the Commiſſioners of the Navy, who ſubſcribed the ſaid Liſts, and produce ſuch Certificate to the ſaid Agent, and unleſs the ſaid Agent, on the producing of ſuch Certificate, refuſe to pay the ſaid Prize or Bounty-money (in caſe the ſame be payable according to the Directions of his Majeſty's Declaration) within two Months after ſuch Demand made and ſuch Certificate produced.

unleſs the R's be ſooner taken off, and a Certificate produced.

And the Agent thereupon refuſe to pay the Prize or Bounty-money.

Commiſſioners of the Navy may purchaſe, for the King's Uſe, Naval Stores on board neutral Ships brought into Port by the King's Ships.

By *Sect.* 38. It ſhall be lawful for the principal Officers and Commiſſioners of the Navy or their Officers, during the preſent War with *France*, to purchaſe, on the Account of his Majeſty, all Naval Stores brought into any of the Ports of this Kingdom, by any of his Majeſty's Ships on board any Ships of Neutral Nations; and the Commiſſioners and Officers of the Cuſtoms ſhall permit ſuch Naval Stores ſo purchaſed, to be entered and landed within any of the Ports of this Kingdom notwithſtanding, 12 *Car.* 2. *cap.* 18.

From and after 1 *Sept.* 1760, all Notifications of the Payment of the Shares of Prizes condemned in *Great Britain*, and from and after 1 *Feb.* 1761, all Notifications of thoſe condemned in any other of the *Britiſh* Dominions in *Europe* or *America*; and from and after 25 *Dec.* 1761, of thoſe condemned elſewhere, are to be inſerted, &c. by the Agents, if condemned in *Great Britain*, in the London Gazette; and if condemned in any other of the King's Dominions, in the Gazette or other News-paper, of the Place of public authority, and where there are none, then in one of the

By 33 *Geo.* 2. *cap.* 19. *Sect.* 1. After the firſt of *September* 1760, Notifications required by 29 *Geo.* 2. *c.* 34. to be given of the Payment of the Shares of Prizes taken by his Majeſty's Ships, and condemned in *Great Britain*, and after the firſt of *February* 1761, all Notifications of the Payment of the Shares of Prizes condemned in any other of his Majeſty's Dominions, in *Europe*, or Plantations in *America*; and after the 25th of *December* 1761, all Notifications of the Payment of the Shares of Prizes condemned in any other of his Majeſty's Dominions, ſhall be publiſhed as is herein after mentioned, *viz.* if the Prize be condemned in the High-Court, or other Court of Admiralty in *Great Britain*, then the Agents appointed, in purſuance of the ſaid Act for the Appraiſement and Sale of ſuch Prize, ſhall publiſh ſuch Notification under their Hands in the London Gazette, and if condemned in any Court of Admiralty in any other of his Majeſty's Dominions, ſuch Agents ſhall publiſh ſuch Notification under their Hands in the Gazette, or ſome other News-paper of public authority, of the Place where the Prize is condemned; and if there be no Gazette or News-paper publiſhed there, then in one of the moſt public News-papers of ſuch Place: And all Perſons publiſhing ſuch Notification, ſhall deliver to the Collector, Cuſtomer, or Searcher of the Cuſtoms belonging to the Place where the Prize is condemned, or their Deputy; and if there be no ſuch Collector, &c. then to the principal Officer of the Place, or his Deputy, two of the Gazettes, or other News-papers in which ſuch Notifications are publiſhed; and if there be not any public News-papers in ſuch Place, then ſuch Perſons ſhall give two ſuch Notifications in writing

writing under their Hands, to the ſaid Collector, &c. and every ſuch Collector, &c. ſhall ſubſcribe his Name on ſome conſpicuous part of both the ſaid Gazettes, News-papers, or written Notifications, and by the firſt Ship which ſails after his Receipt of ſuch Gazettes, &c. to *Great Britain*, ſhall tranſmit to the Treaſurer of *Greenwich Hoſpital*, or his Deputy, one of the ſaid Gazettes, &c. with his Name ſo ſubſcribed, and ſhall keep the other with his Name thereon ſubſcribed: And in every ſuch printed or written Notification, the Agents ſhall ſpecify their Places of abode, and the Day of the Month and Year appointed for Payment of the Shares of the Prize to the Captors: And all ſuch Notifications, with reſpect to Prizes condemned in *Great Britain*, ſhall be publiſhed in the London Gazette three Days at leaſt before any Share of any ſuch Prize be paid; and all ſuch Notifications, with reſpect to Prizes condemned in any other of his Majeſty's Dominions, ſhall be delivered to the Collector, &c. aforeſaid, three Days at leaſt before any Share of ſuch Prize be paid.

moſt public News-papers of the Place; and two of the ſaid Gazettes or News-papers are to be delivered by them to the Collector or other principal Officer of the Port. And if there ſhall be no public News-paper, they are then to deliver two Notifications in writing, which are to be ſigned by the Collector, or other principal Officer; one whereof is to be tranſmitted by the firſt Ship, to the Treaſurer of *Greenwich* Hoſpital, and to be regiſtered there; and the other to be kept in his Cuſtody. The Agent's Place of abode, and the Day and Year appointed for Payment of Shares, to be inſerted in every Notification; and thoſe condemned in *Great Britain*, to be publiſhed three Days; and thoſe in other Parts, to be delivered to the Collector, &c. three Days alſo before Payment is made of any of the Shares.

By *Sect.* 2. All Agents appointed in purſuance of the ſaid Act, by the Flag-Officers, Captains, Officers or Ships Companies, and others of his Majeſty's Ships of War, for the Diſtribution of any Bounty Bills, granted by the ſaid Act, ſhall publiſh under their Hands, in the London Gazette three Days at leaſt

Three Days previous Notice alſo to be publiſhed in like manner by the Agents in the London Gazette, of the Diſtribu-

tion of any Bounty Bills.

before the Payment of ſuch Bounty Bills, Notification of the Day of the Month and Year appointed for the Payment of ſuch Bounty-money, and inſert in ſuch Notification the Places of their abode.

Where public Notification hath been, or ſhall be given of the Payment of Prize or Bounty-money, but the Day of Commencement of the Payment, and the Agent's Name and abode hath not or ſhall not be ſpecified; ſuch Agents for Prizes condemned in *Great Britain*, or for the Diſtribution of the Bounty-money, are on or before 25 *Dec.* 1760; And for thoſe condemned in any other of the *Britiſh* Dominions in *Europe* or *America*, on or before 1 *June* 1761; And for thoſe elſewhere, on or before

By *Sect.* 3. Where any public Notification hath during the preſent War been given before the times before-mentioned for Notifications in *Great Britain*, and other his Majeſty's Dominions, of the Payment of any Prize or Bounty-money in reſpect of any of his Majeſty's Ships of War, and the Day whereon ſuch Payment commenced, and the Names and Places of abode of the Agents for the Appraiſement and Sale of ſuch Prizes, or Diſtribution of ſuch Bounty-money was not ſpecified; the Agents for the Appraiſement and Sale of ſuch Prizes condemned in *Great Britain*, or for the Diſtribution of ſuch Bounty-money, ſhall, on or before the 25th of *December* 1760; and the Agents for the Appraiſement and Sale of Prizes condemned in any other of his Majeſty's Dominions in *Europe* or *America*, ſhall, on or before the Firſt of *June* 1761; and the Agents for the Appraiſement and Sale of Prizes condemned in any other of his Majeſty's Dominions, ſhall, on or before the 25th of *March* 1762, give Notification under their Hands of the Day of the Month and Year, appointed for the Payment of the Shares of ſuch Prize or Bounty-money, and ſhall ſpecify in every ſuch Notification their Places of abode: And all ſuch Notifications ſhall be publiſhed or delivered, atteſted and tranſmitted by and to ſuch Perſons, and in ſuch manner, as the Notifications to be publiſhed or given, after the Firſt of *September* 1760, the Firſt of *February*

bruary 1761, and the 25th of *December* 1761, herein before directed. 25 *March* 1762, to give Notification of the Day and Year appointed for ſuch Payments, and to ſpecify alſo their Place of abode; the ſaid Notification to be delivered, atteſted, and tranſmitted, as before directed.

By *Sect.* 4. If any Agent, for Appraiſement or Sale of any Prize taken by any of his Majeſty's Ships, or for the Diſtribution of any Bounty-money, neglect to publiſh or deliver any Notification required by the ſaid former Act, or this Act, or not publiſh or deliver any ſuch Notification for ſuch Space before the Payment of any Part of ſuch Prize or Bounty-money, or within the Times herein reſpectively limited, or in the manner herein appointed, or not ſpecified therein the Things herein directed, he ſhall for every ſuch Offence forfeit 100 *l.* over and above all Penalties by the former Act; to be recovered by Action of Debt, &c. in any Court of Record in *Great Britain* or *America*, or elſewhere in any of his Majeſty's Dominions, in which no Eſſoin, &c. ſhall be allowed: And if any Collector, Cuſtomer, or Searcher of the Cuſtoms, or principal Officer, or ſuch Deputy as aforeſaid, neglect to receive or to atteſt, or not tranſmit any ſuch Gazette, News-paper, or written Notification as is before directed, he ſhall for every Offence forfeit 100 *l.* to be recovered as the above Penalty.

Agents neglecting or refuſing to publiſh or deliver any ſuch Notification, forfeit 100 *l.* over and above all Penalties, &c. inflicted by the former Act.

And Collectors, &c. refuſing to atteſt or tranſmit the ſame, forfeit 100 *l.* alſo.

By *Sect.* 5. The Notifications in all ſuch Gazettes, News-papers, and in writing reſpectively, ſo tranſmitted and atteſted by ſuch Collector, &c. and regiſtered at *Greenwich* Hoſpital, on proof of the Hand-writing of ſuch Collector, &c. ſhall be good Evidence in all Courts of Law and Equity, that the Perſons whoſe Names are therein ſpecified as

The Notification ſo tranſmitted, atteſted, and regiſtered, deemed ſufficient Evidence of the Identity of the Agents.

Agents for the Prizes therein mentioned, are such Agents.

All Letters of Attorney exhibited by Agents, are to be duly registered by the Registers of the Admiralty Courts, within 14 Days after being exhibited,

By *Sect.* 6. The Register of the High Court of Admiralty, and of all other Courts of Admiralty in *Great Britain*, shall duly register, in Books kept for that purpose only, all Letters of Attorney exhibited after the 29th of *September* 1760, by any Agent for any Prize taken by any of his Majesty's Ships, or by any Agent for the Distribution of any Bounty Bills, within 14 Days after the same be exhibited; which Registry shall contain the Day of Delivery and Entry, the Dates of the Letters of Attorney, the Names and Places of abode of the Agents, the Names of the Prizes taken, or of the Ships of War or Privateers of the Enemy taken and destroyed; with the Names of the Ships by which such Prizes have been taken, or such Ships of War or Privateers taken or destroyed; and the said Register shall, on the 26th of *March* and the 30th of *September*, or within 40 Days thereafter in every Year, transmit unto the Treasurer of *Greenwich* Hospital, or his Deputy, a Copy under his Hand, of all such Entries within the preceding half Year; and if such Register neglect to make and keep such Entries, or to transmit such Copies within the Times herein limited, he shall for every Offence forfeit 100 *l.* to be recovered by Action of Debt, &c.

and Transcripts thereof to be transmitted by them half yearly to the Treasurer of the Hospital,

on Penalty of forfeiting 100 *l.*

One Moiety of all Forfeitures to go to the Informer, and the other to the Use of the Hospital. Those given to the Use of the Hospital

By *Sect.* 7. All Penalties given by this Act, shall be applied one Moiety to the Informer, and the other Moiety, to the Use of *Greenwich* Hospital.

By *Sect.* 8. All Penalties given to the said Hospital, by this or any other Act, may be sued for in the Name of the Master or Governor,

vernor, or of the Lieutenant or Deputy-Governor of the ſaid Hoſpital.

may be ſued for in the Name of the Maſter, Governor or Deputy Governor.

By Stat. 32 *Geo.* *c.* 25. *Sect.* 1. So much of the Clauſe in 29 *Geo.* 2. *c.* 34. as directs the Commiſſioners of the Admiralty, or any Perſons by them impowered, at the requeſt of any Owners of any Ship giving ſuch Security as therein is mentioned, to cauſe to be iſſued forth Commiſſions to the Commander of ſuch Ships for the Purpoſe in the ſaid Clauſe mentioned, ſhall be repealed.

So much of the recited Clauſe as directs the Admiralty, upon Application and Security given, to grant Commiſſions to Privateers, repealed.

By *Sect.* 2. The Commiſſioners of the Admiralty, or three of them, or any Perſon by them impowered, ſhall, at the requeſt of any Owners of any Ship giving ſuch Bail and Security as is herein after mentioned, cauſe to be iſſued forth Commiſſions to any Perſons whom ſuch Owners nominate to be Commander; or in caſe of Death, ſucceſſive Commanders of ſuch Ship, for the attacking and taking with ſuch Ship, or the Crew thereof, any Place upon the Land, or any Ship or Goods belonging to or poſſeſſed by any of his Majeſty's Enemies. And ſuch Ship or Goods ſo taken with ſuch private Owners Ship, according to ſuch Commiſſion (being firſt adjudged lawful Prize in any of his Majeſty's Courts of Admiralty) ſhall wholly belong to, and be divided among the Owners of ſuch Ship, and the Perſons on board the ſame aſſiſting to the taking thereof, in ſuch Shares as agreed on with the Owners and the Perſons intitled by ſuch Agreements; and neither his Majeſty or any Admiral, or any Perſon other than the Owners of ſuch Ship, being

Admiralty to grant Commiſſions, upon Owners, &c. giving ſuch Bail and Security as is herein after mentioned.

Prizes to belong ſolely to, and be divided among the Owners and Captors, as ſhall be agreed between them,

reſerving only the Cuſtoms and Duties payable

by Act 29 *Geo.* 2.

ing the Captor of ſuch Prize Ship or Goods, and the Perſons claiming under them, ſhall be intitled to any Share thereof (except as to the Cuſtoms and Duties.)

No Commiſſion to be granted to Veſſels, under 100 Tons Burthen, 10 Guns and 40 Men; unleſs the Admiralty ſhall think fit; the Owners giving Bail and Security as herein after mentioned.

By *Sect.* 3. No ſuch Commiſſion ſhall be granted to any Perſon by Virtue of this Act, unleſs the Ship for which the ſame is granted, in *Europe*, be of the Burthen of 100 Tons, and carry ten Carriage Guns, being three Pounders, and 40 Men; or unleſs the Commiſſioners of the Admiralty, or three of them, or any Perſon by them impowered, think fit to grant the ſame to any Ship of inferior force or burthen, the Owners giving ſuch Security as is after mentioned.

Admiralty may revoke any former or future Commiſſions.

By *Sect.* 4. It ſhall be lawful for the Commiſſioners of the Admiralty of *Great Britain*, or any three of them, to revoke, by order under their hands, any Commiſſion iſſued to any Commander of any Ship, either by Virtue of the ſaid Act of 29 *Geo.* 2. *c.* 34. or this Act.

Of which Notice is to be forthwith ſent to the Ship's Owners, Agents or Sureties.

Times limited for Order of Revocation to take Place, viz. If the Veſſel be in the Channel; or Northern Seas;

By *Sect.* 5. The Secretary of the Admiralty ſhall, with all convenient ſpeed, after any ſuch Commiſſion revoked, cauſe Notice thereof to be ſent to the Owners or Agent or Surety, or ſome of them, of the Ship deſcribed in ſuch Order of Revocation, and in caſe ſuch Ship be in the Channel, the ſaid Order of Revocation ſhall be effectual to ſuperſede the ſaid Commiſſion, at the Expiration of 20 Days from ſuch Notice, or ſooner, if Notice be given in Writing by the Secretary of the Admiralty to the Commander thereof; and in caſe ſuch Ship be in the Northern Seas, at the Expiration of 30 Days; and in caſe ſuch Ship

Ship be to the Southward of *Cape Finiſterre*, or in the *Mediterranean*, at the Expiration of ſix Weeks; and in caſe ſuch Ship be in *North America*, or the *Weſt Indies*, at the Expiration of three Months; and in caſe ſuch Ship be in the *Eaſt-Indies*, at the Expiration of ſix Months: And any Commander or Owners, Agent or Surety of ſuch Ship whereof ſuch Commiſſion is ſo revoked, may complain thereof to his Majeſty in Council, within 30 Days after the Secretary of the Admiralty cauſes Notice to be given; and the Determination of his Majeſty in Council, touching every ſuch Complaint, ſhall be final.

if to the South of *Cape Finiſterre*, or in the *Mediterranean*, in *North America*, the *Weſt-Indies* or *Eaſt-Indies*.

Complaint may be made to the King in Council of ſuch Revocation.

The Councils Determination to be final.

By *Sect.* 6. In caſe ſuch Order of Revocation be ſuperſeded, ſuch Commiſſion ſhall be deemed to have continued in Force; and all Prizes taken by Virtue thereof ſhall belong to ſuch Owners and Captors, as if ſuch Order of Revocation had not been made.

And if the Order ſhall be ſuperſeded the Commiſſion to ſtand good.

By *Sect.* 7. No Perſon ſhall be liable to be puniſhed for doing, before he has received perſonal Notice of ſuch Order of Revocation, any thing which he might have lawfully done under ſuch Commiſſion, in caſe ſuch Order of Revocation had not been made.

None liable to Puniſhment, before perſonal Notice received of ſuch Order of Revocation.

By *Sect.* 8. Before the granting any Commiſſion in purſuance of this Act, ſuch Bail and Security ſhall be taken as uſual; and previous to the taking of ſuch Security, the Perſons who propoſe to be bound ſhall make Oath before the Judge of the Admiralty of *England*, or his Surrogate, or other Perſon lawfully commiſſioned, that at the time of their being ſworn they are reſpectively worth more Money than the Sum for which they are

Uſual Bail and Security to be taken;

the Parties making Oath of their Qualification,

and the Marſhal ſatisfying himſelf as to the Sufficiency thereof.

are then to be bound, over and above all their juſt Debts: And the Marſhal of the Admiralty, or his Deputy, or the Perſon ſo commiſſioned, is to make Inquiry into the Sufficiency of ſuch Security, and make a report thereof to the ſaid Judge, or his Surrogate, before any ſuch Commiſſion be granted.

Perſons applying for Commiſſions, to make Application in Writing, and ſet forth a Deſcription of the Veſſel, &c.

By *Sect.* 9. Every Perſon applying to the Admiralty to obtain any Commiſſion in purſuance of this Act, ſhall make ſuch Application in Writing, and therein ſet forth a Deſcription of the Ship for which ſuch Commiſſion is requeſted, ſpecifying the Burthen, and the Number and Nature of Guns, to what Place belonging, and the Names of the principal Owners, and the Number of Men to be put on board (all which ſhall be inſerted in every Commiſſion;) and every Commander of a private Ship of War ſhall produce ſuch Commiſſion to the Collector or Cuſtomer, or Searcher of the Cuſtoms, at the Port from whence ſuch Ship is firſt fitted, or to their Deputies: And the ſaid Collector, &c. ſhall as ſoon as may be, without Fee, examine ſuch Ship, ſo as to aſcertain the Burthen thereof, and the Number of Men, and Number and Nature of Guns: And if ſuch Ship be found of ſuch Burthen, and manned and armed according to the Deſcription inſerted in ſuch Commiſſion, or be of a greater Burthen or Force, then ſuch Collector, &c. ſhall, upon the Requeſt of the Commander, give a Certificate thereof under his Hand *gratis*; which Certificate ſhall be deemed a neceſſary Clearance, before ſuch private Ship be permitted to ſail; and if the Commander depart with ſuch Ship from ſuch Port of Clearance, before he hath received ſuch Certificate, or

the Particulars thereof to be inſerted in the Commiſſion; which Commiſſion ſhall be produced to the Collector or other Officer of the Port, who is to examine the Ship, and ſee how far ſhe agrees, in all reſpects, with the ſaid Deſcription; and if ſhe agrees thereto, or be of a greater Force or Burthen, is to grant a Certificate,

depart

depart or proceed upon a Cruize, with a Force inferior to the Force ſpecified in ſuch Commiſſion, or required by this Act, the Commiſſion for ſuch Ship ſhall from thenceforth be void; and the Commander ſo offending, being convicted before any Court of Admiralty, ſhall be impriſoned for ſuch Space as the ſaid Court ſhall direct, not exceeding one Year for one Offence.

which ſhall be a Clearance to ſuch Veſſel.

Penalty of departing without ſuch Clearance, or with a Force inferior to that ſpecified in the Commiſſion.

By *Sect.* 10. If any Collector, or Searcher of the Cuſtoms, or their Deputies, grant a Certificate for any Ship, not of the Burthen or Force ſpecified in the Commiſſion, or of greater, he ſhall forfeit his Office, and be for ever incapable of holding any Office in the Cuſtoms, and ſhall alſo forfeit 100*l.* to be recovered by any Perſon who ſhall ſue for the ſame, by Action of Debt, &c. in any Court of Record at *Weſtminſter*, one Moiety to be paid to the Informer, and the other Moiety to the Treaſurer to the Corporation for the Relief of ſick and diſabled Seamen, and of the Widows and Children of ſuch as be killed or drowned in the Merchants Service, for the Uſe of ſuch Corporation; or where ſuch Forfeitures be incurred in any of the Outports, in which a Corporation is or ſhall be eſtabliſhed for the Purpoſes aforeſaid, the Moiety of ſuch Penalty ſhall be paid to the Truſtees for the Uſe of that Corporation.

Collector, &c. granting a falſe Certificate,

to forfeit his Office and 100. *l.* Recovery and Application thereof.

By *Sect.* 11. The number of Tons ſo to be certified, ſhall be aſcertained according to the Rules in 8 *Ann. c.* 12. *for making a Baſon at* Liverpool; *the Rules are, that Ships ſhall be meaſured by taking the Length of the Keel as ſhe treads on the Ground; and the Breadth to be taken within Board by the midſhip Beam from Plank*

Tonage to be aſcertained according to the Rules preſcribed by Act 8 *Ann.*

Plank to Plank, and half that Breadth for the Depth, then multiply the Length by the Breadth, and the Product by the Depth, and divide by ninety-four.

CHAP. VII.

Of Policies of Assurance.

I. *Assurances, by whom first introduced.*
II. *Assurances, the Nature of them.*
III. *How esteemed of by Law.*
IV. *The various Ways of ensuring, and on what.*
V. *Assurance, when esteemed most dangerous, and of fraudulent* Policies.
VI. *Of the Receipt of* Premio, *and the Custom of Abatement on Losses.*
VII. Policies, *that now ensure against all the Accidents of Heaven and Earth.*
VIII. *A Ship ensured generally, whether the same includes the Cargo, and whether it is necessary in the* Policy *to mention the particular Goods.*
IX. *Cases upon Assurances.*
X. *When the Policy is discharged by Deviation.*
XI. *Goods ensured in one Ship, are afterwards in the Voyage put into another, the second miscarries, whether the Assurers are made liable.*
XII. *A Man ensures more than the Value of the Cargo, the Custom in such a Case when usurious.*
XIII. *A Ship is insured from one Port to another, and there to be landed; the Cargo after Arrival is sold, and before landed is burnt, whether the Assurers shall be made answerable.*
XIV. *A Ship insured from one Port to* (blank) *being in Time of War taken, whether the Assurers shall answer.*
XV. *Of the Assured's renouncing after a Loss; and what Operation the same has by Custom.*

In vita Claud. Cæsar. lib. 25. cap. 18.

I. IT is conceived by *Suetonius*, that *Claudius Cæsar* was the first that brought in this Custom

Policies of Assurance were certainly not known to the Ancients: and were probably introduced from Italy to this Country in the time of Queen Elizabeth.

Cuſtom of *Aſſurance*, by which the Danger and Adventure of Voyages is divided, repaired and born by many Perſons, who for a certain Sum, by the *Spaniards* called *Premio*, aſſure Ships or Goods, or both, or a Proportion, according as the Policy is *.

* *Leg* 1 *ff. qui Satisd. cog. Grotius lib.* 2. *cap.* 12. §. 3.

II. By 43 *Eliz. c.* 12. An *Office of Aſſurance* was erected for deciding of Differences ariſing upon Policies of *Aſſurance* in *London*; and a Court was to be held for that Purpoſe, by Virtue of a ſtanding Commiſſion iſſued out by the Lord Chancellor to the Court of Admiralty, the Recorder of *London*, two Doctors of the Civil Law, two Common Lawyers, and eight Merchants; which Commiſſioners were to meet weekly, and to have Power to ſummon and examine Witneſſes, and hear and determine all Cauſes in a ſummary Way, ſubject to appeal to the Lord Chancellor, *&c.* And by Stat. 14 *Car.* II. *c.* 25. ſeveral additional Privileges were granted to this Court, which was a Court of Equity, as well as of Law; but now there is no ſuch Court in Being, and Cauſes of this Nature are tried in the ordinary Courts.

By 6 *Geo.* I. *c.* 18. His Majeſty was empowered to grant two Charters for Aſſurance of Ships and Merchandize, *&c.* and to incorporate the Adventurers, in Conſideration of a large Sum of Money by them to be advanced.

III. *Indebitat Aſſumpſit pro præmio*; upon a Policy of *Aſſurance* upon ſuch a Ship, the Defendant demurred ſpecially becauſe he did not ſhew the Conſideration certainly what the *Præmium* was, or how it became due, *ſed non allocat'* for it is as good as *Indebitat. pro quodam Salario*, which hath been adjudged good.

3 *Keb.* 575. 2 *Levinz.* 153. *Fowlk v. Pinſacho.*

If

If the Perſon whoſe Name is uſed in the *Aſſurance*, be in Time of War taken to be no Friend to the State, there is danger to pay the *Aſſurance*; if after the Subſcription of the Aſſurer, the Goods ſhould be arreſted and made forfeited, to anſwer the ſame to the Prince, as it often happens.

Lex Mercat. 109. If Goods are ſtolen or embezzeled on Ship-board, the Maſter not the Aſſurer is reſponſible. So if the Goods he loſt in default of the Pilot.

Aſſurance for 12 Months, how to be conſtrued. Policy of *Aſſurance* to warrant a Ship for twelve Months; the Ship did not periſh within the time of twelve Months, being accounted according to the Months of *January*, *February*, &c. but within twelve Months reckoning twenty-eight Days to the Month, reſolved that the Policy was not forfeited; cited in Sir *Woolaſton Dixey*'s Caſe, 1 *Leon.* 96.

IV. *Aſſurances* are of various ſorts, ſome being to places certain, others general: Thoſe that are made to places certain, are commonly upon Goods laden or to be laden aboard outward, and until the ſame Adventure ſhall be laid aſhore at ſuch a Port.

Leg. 4. 5. *D. de Naut. fan.*

Or upon Goods laden or to be laden homeward in ſuch a Ship till the Adventure ſhall likewiſe be landed.

Johannes Lociuius, l. 2. *c.* 5. §. 5, 6. Or elſe upon Goods out and in, with liberty to touch at all Ports as are mentioned in the Policy.

So likewiſe on Ships that go trading Voyages, as round to *Cadiz*; and that it ſhall be lawful after the Ship's delivery there, to take in at the ſame Port another Cargo, and with that proceed to the *Weſt-Indies* or other parts, and back again to *Cadiz*, and from thence to *London*; this Policy being general and dangerous,

gerous, ſeldom procures Subſcriptions, or at leaſt very chargeable ones.

As Goods and Merchandize are commonly enſured, ſo likewiſe are the Ships Tackle and Furniture; but in regard there ſeldom happens a Voyage but ſomewhat is miſſing or loſt, the *Premio* commonly runs higher than for Merchandize. *Sautor. p. 3. num. 13. ſeq. 43. ſeq.*

Aſſurances may be made on Goods ſent by Land, ſo likewiſe on Hoys, and the like, and may be made on the Heads of Men; as if a Man is going for the *Streights*, and perhaps is in ſome fear that he may be taken by the *Moors* or *Turkiſh* Pirates, and ſo made a Slave, for the Redemption of whom a Ranſom muſt be paid, he may advance a *Premio* accordingly upon a Policy of *Aſſurance*; and if there be a Caption, the Aſſurer muſt anſwer the Ranſom that is ſecured to be paid on the Policy. *Liſle ver Sedgwick. Mich. 29 Car. 2. in B. R.*

V. Thoſe *Aſſurances* are moſt dangerous when there are theſe words inſerted, *loſt or not loſt*; which is commonly done when a Ship hath been long miſſing, and no Tidings can be had, the *Premio* (eſpecially in time of War) will run very high, ſometimes 30 or 40 *per Cent.* and though it happens at the time that the Subſcription is made, the Ship is caſt away, yet the Aſſurers muſt anſwer.

But if the Party that cauſed the *Aſſurance* to be made, ſaw the Ship wreckt, or had certain Intelligence, ſuch Subſcription will not oblige, the ſame being accounted a meer Fraud.

So likewiſe if the Aſſured, having a rotten Veſſel, ſhall aſſure upon the ſame more than ſhe is worth, and afterwards give order that, going out of the Port, ſhe ſhould be ſunk or wreckt,

If the Perſon whoſe Name is uſed in the *Aſſurance*, be in Time of War taken to be no Friend to the State, there is danger to pay the *Aſſurance*; if after the Subſcription of the Aſſurer, the Goods ſhould be arreſted and made forfeited, to anſwer the ſame to the Prince, as it often happens.

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So likewiſe if the Aſſured, having a rotten Veſſel, ſhall aſſure upon the ſame more than ſhe is worth, and afterwards give order that, going out of the Port, ſhe ſhould be ſunk or wreckt,

wreckt, this will be fraudulent, and not oblige the Aſſurers to anſwer.

A Merchant having a doubtful Account of his Ship, inſures her, without acquainting the Inſurers of her Danger; Chancery relieved againſt the Policy of this fraudulent Inſurance.

In the Year 1678, one *Nownham Perkins* and *Stoakes* were Owners of a Veſſel called the *May-Flower* Ketch, the Veſſel coming laden with Wines on the account of *Fierbraſſe* and *Stone*, to the *Iſle of Wight*; *Perkins* being then in the ſame Place, contrives with one *Ivy* the Maſter to ſell the Freighters Goods privately, and that being effected, to go out to Sea ſome ſmall diſtance from the Iſle, and there privately ſink the Veſſel, and pretend ſhe ſtruck, and then foundered by the Extremity of Weather. The Plot being laid, *Perkins* haſtens up to *London*, and makes a Policy of *Aſſurance* on the Veſſel; which being done, remits his Orders to *Ivy* to put in Execution the Contrivance, who accordingly, the Goods, or the beſt of them, being diſpoſed of, ſtands out to Sea, and then with his own Hands, by the Force of an Iron Crow, makes a hole in the Hold, and then in his long Boat (the Crew perceiving the Veſſel to be ſinking) conveys himſelf and Mariners aſhore; *Ivy* remits up advice of the Loſs, and *Perkins* (as if he had never known any thing of the Matter) demands the Monies aſſured with great Confidence, and thereupon brings an Action for the ſame; but before the Cauſe came to a Trial, *Fierbraſſe* and *Stone* bring Trover againſt *Perkins*, and thereupon the whole Practice came out, and a Verdict was had againſt the Defendant, with this further,

Hill. 32 *Car.* 2. *B. R.*

That

That if *Perkins* would proceed on his Actions on the *Aſſurance*, he muſt expect that this Practice and Fraud of his would totally poiſon his *Aſſurance*, and thereupon, being well adviſed, never proceeded.

The Inſurance was againſt the Barretry of the Maſter; the Breach aſſigned was, that the Ship was loſt by the Fraud and Neglect of the Maſter; this is well enough; it is the Meaning of the Words of the Policy; it is not neceſſary to uſe the very Words. L. *Raymond*, 1349. 8 *Mod.* 231. *Stra.* 581.

The Government laid an Embargo, ſeized a Ship, and converted her to a Fire-ſhip; the Inſurers are liable. *Ibid.* 840.

Where a Maſter deviates for the Benefit of his Owners it is no Barretry, though it may be a Breach of Contract. 2 *Stra.* 1173.

If the Mariners force the Maſter to return, it is not Barretry. 2 *Stra.* 1264.

If a Ship warranted to depart with Convoy, goes out of the Way in order to have the Opportunity of Convoy, this is no Deviation. *Bur. Rep.* 347, &c.

A Deviation (without Neceſſity) determines the Policy, and diſcharges the Inſurer. *Bur Rep.* 351.

VI. Beſides the two Corporations before-mentioned, there are ſeveral Offices near the *Royal-Exchange* for the aſſuring Ships and Merchandize, where many of the moſt eminent Merchants by their Subſcriptions ſubject themſelves to the Payment each of a Sum certain, as 100*l.* or more, at the *Premio* then current, which in the Policy is ſaid to be received, tho' it may be not actually paid: There uſed to be a Clauſe to deduct 10 *per Cent.* in Caſe of Loſs, and ſix *per Cent.* more was cuſtomarily abated on Account of

prompt Payment. So that the Assured received but 84 *l. per Cent.* But of late it is become much more frequent to stipulate for an Abatement of two *per Cent.* only, in which Case there is a proportional Advance of the *Premio.*

If an Assurer pays his Money, believing the Ship to be lost when it is not, he may bring an *Assumpsit* for the Money. Cited to be adjudged, *Salk.* 22. *pl.* 2.

VII. The *Policies* now-a-days are so large, that almost all those curious Questions that former Ages, and the Civilians according to the Law Marine, nay, and the common Lawyers too, have controverted, are now out of Debate; scarce any Misfortune that can happen, or Provision to be made, but the same is taken care for in the Policies that are now used; for they insure against Heaven and Earth, stress of Weather, Storms, Enemies, Pirates, Rovers, &c. or whatsoever Detriment shall happen * or come to the Thing ensured, &c. is provided for.

Ut quæ in naves imposuissent, ab hostium tempestatisque vi publico periculo essent. Negotiatoribus certe lucra proposuit suscepto in se damno, si cui quid per tempestates accidisset, Livius, *lib.* 23. *cap.* 25. *Vide* Zesius *in Commentario ad digesta tit pro Socio, num.* 25.

* *Sub nomine periculi, de quo fit cautio, comprehenditur omnis casus qui accidit in mari, a tempestate, ab hostibus, prædonibus, repriſaliis, ut vocant arrestis, aliisque modis usitatis & inusitatis citra fraudem & culpam contrahentium, aut domini mercium vel navis.* Grotius *de Jure Holl. part* 24.

2 *Vern.* 176. 4 *Com. Dig.* 196. But a Policy against Restraint of Princes, will not extend to Practices against the Laws of Countries, to a Seizure for not paying Custom and the like.

A Man lent Money on a Bottomry-Bond, and insured the same Money on the Ship; she out-lived the Time in which the Bond came due, and then was lost; he recovers on the

the Bond; Chancery would not ſuffer to recover on the Policy alſo, but decreed it to be delivered up. *Equ. Abr.* 391, and 2 *Vern.* 269.

But where the Inſurance was larger as to the Voyage, than the Bottomry-Bond, and the Ship was loſt, Chancery would not intermeddle. 2 *Vern.* 717.

When an Aſſurance is Intereſt or no Intereſt, the Plaintiff has no occaſion to prove his Intereſt, for the Defendant cannot controvert it. *Com. Rep.* 360. *pl.*

On a Policy Intereſt or no Intereſt, a Recapture, after being in an Enemy's Port, will not avail the Inſurer. 2 *Stra.* 1250.

VIII. If a Merchant enſures ſuch a Ship generally, and in the Policy it is expreſſed of ſuch a Burthen, the Ship happens then to be laden, and after miſcarries, the Enſurer ſhall not anſwer for the Goods, but only for the Ship. *Locinius, lib.* 2. *cap.* 5. §. 7, 9, 10.

It matters not in the Policy whether the particular Wares and Goods are named, but generally upon the principal Wares, and all other Commodities laden or to be laden for the Enſured, or for his Account, or for any other.

IX. If a Ship be Enſured *from the Port of London* to *Cadiz*, and before the Ship breaks Ground, takes Fire, and is burnt, the Aſſurers in ſuch a caſe ſhall not anſwer, for the Adventure begun not till the Ship was gone from the Port of *London*; but if the Words had been, *at and from the Port of London*, there they would upon ſuch a Misfortune have been made liable.

If ſuch an *Aſſurance* had been from *London* to *Cadiz*, and the Ship had broke Ground, and afterwards been driven by Storm to the

Note, The Port of *London* extends from the

Port of *London*, and there had took Fire, the Enſurers muſt have anſwered; for the very breaking of Ground from the Port of *London* was an Inception of the Voyage.

North Foreland in the Iſle of *Thanet*, over in a Line to the *Naſe* in *Eſſex*, and from thence to *London*-Bridge, *Rot. Scaccar.* 19. *Car.* 2.

On the other hand, if a Man at *Cadiz* enſures a Ship from thence to *London*, if a Loſs happens, the Aſſurer, if he comes into *England*, ſhall anſwer by the *Common Law*; for though the Place where the Subſcription was made, and the *Premio* given was in a Foreign Country, yet that is not material, for the Action that is brought is grounded on the Promiſe which is tranſitory, and not local, and ſo it was adjudged, where the Defendant in conſideration of 10 *l.* had enſured, that if the Plaintiff's Ship and Goods did not come ſafe to *London*, he would pay 100 *l.* afterwards the Ship was robbed on the Sea, and in an Action brought for the 100 *l.* the Plaintiff had Judgment, notwithſtanding the Robbery or Loſs was on the main Sea, and the Subſcription out of the Realm.

7 *H.* 6. 14. *in Quareimpedit*, 5 *B.* 2. Trial 54. 34 *H.* 8. tit. 107. *Mich.* 30, 31. *Eliz.*

Deviation or not muſt be conſtrued according to Uſage. 2 *Salk.* 445.

An Intention to deviate does not diſcharge the Under-writer. 2 *Stra.* 1249.

If the Mariners force the Maſter to return, it is no Deviation. 2 *Stra.* 1264.

Where the Maſter deviates for the Benefit of his Owners, it may be a Breach of Contract. 2 *Stra.* 1173.

X. If after a Policy of *Aſſurance*, a Damage happens, and afterwards in the ſame Voyage a Deviation, yet the Inſured ſhall recover for what happened before the Deviation, for the Policy is diſcharged from the time of the Deviation only.

Salk. 444. 2 L. *Raym.* 840. *Straacha* 806, cited in *Show.* 325.

XI. If

XI. If Goods are enſured in ſuch a Ship, and afterwards in the Voyage it happens ſhe becomes leaky and crazy, and the *Super-Cargo* and Maſter by conſent become Freighters of another Veſſel for the ſafe Delivery of the Goods; and then after her relading, the ſecond Veſſel miſcarries *, the Aſſurers are diſcharged: But if there be theſe Words, *The Goods laden to be tranſported and delivered at ſuch a Place by the ſaid Ship, or by any other Ship or Veſſel until they be ſafely landed*, then the Enſurers muſt anſwer the Misfortune.

* That has been much doubted, and Opinions of the Court have generally inclined againſt the Aſſurers. *Leg. ult. ad Rhod. Digeſt. Paulus. lib.* 14. *tit.* 2. §. 10.

The Inſured have no Right to charge the *Bottom*, though to a better or ſtronger Ship. *Bur.* Rep. 351.

XII. If a Man enſures 5000 *l.* worth of Goods, and he hath but 2000 *l.* remitted, now he having enſured a real Adventure, by the Law Marine all the Aſſurers muſt anſwer *pro rata*, if a Loſs. But by the Opinion of ſome, only thoſe firſt Subſcribers who underwrit ſo much as the real Adventure amounted to, are to be made liable, and the reſt remitting their *Premio* (10 *s. per Cent.* deducted out of the ſame for their Subſcriptions) are to be diſcharged.

Vide Grot. Introd. Jur. Hol. 212. 23. And indeed is more the Cuſtom of Merchants than Law.

On a Policy of Inſurance on Goods by Agreement valued at 600 *l.* and the Inſured not to be obliged to prove any Intereſt, the *Lord Chancellor* ordered the Defendant to diſcover what Goods he put on board; for although the Defendant offered to renounce all Intereſt to the Inſurers; yet referred it to a Maſter to examine the Value of the Goods ſaved, and to deduct it out of the Value or Sum of 600 *l.* at which the Goods were valued by the Agreement.

2 *Vern.* 716.

Debt upon Obligation with Condition, to pay ſo much Money, if a Ship returned within ſix Months from *Oſtend* in *Flanders* to *London* (which was more by a third Part than the Legal Intereſt of the Money) and if ſhe do not return, then the Obligation to be void: The Defendant pleaded, that there was a corrupt Agreement between him and the Plaintiff, and that at the time of making of the Obligation, that he ſhould have no more for Intereſt than the Law permits, in caſe the Ship ſhould ever return, and avers that the Bond was entered into by Covin, to avoid the Statute of Uſury. *Per Hale*, clearly this Bond is not within the Statute, for this is the common Way of Aſſurance, and if this were void by the Statute of Uſury, Trade would be deſtroyed, for it is a caſualty whether ever ſuch Ship ſhall return or not, but he agreed the Averment was well taken, becauſe it diſcloſed the manner of the Agreement. *Hardres* 418. *Joy* againſt *Kent*.

To depart with Convoy.
1 *Show.* 320.
4 *Mod.* 58.
3 *Lev.* 320.
Salk. 443.
Carth. 216.
2 *Saund.* 205.
2 *Keb.* 717. 722.
4 *Mod.* 176.
6 *Mod.* 13.
1 *Salk.* 31. 440.

Action upon the Caſe, upon a Policy of Aſſurance of Goods from *London* to *Naples*; the Adventure was to begin in time of the Lading at *London* (Dangers of the Sea only excepted) with this Clauſe, *warranted to depart with Convoy*; the Ship departed with Convoy, but was ſeparated from the Convoy by ſtreſs of Weather, and put into *Torbay*, and was there detained by contrary Winds; afterwards the Maſter of the Ship expecting to meet the Convoy, departed out of the Harbour, but could not meet the Convoy, being hindered by ſtreſs of Weather, the Ship was taken by the *French*. Judgment *pro Quer'*. *Jefferies* v. *Legendra*. *B. R.*

Caſe

Case upon a Policy, which was to insure the *William Galley*, in a Voyage from *Bremen* to the Port of *London*, *warranted to depart with Convoy*: The case was, the Galley set sail from *Bremen* under Convoy of a *Dutch* Man of War to the *Elb*, where they were joined with two other *Dutch* Men of War, and several *Dutch* and *English* Merchant Ships, whence they sailed to the *Texel*, where they found a Squadron of *English* Men of War and an Admiral; after a stay of nine Weeks, they set out from the *Texel*, and the Galley was separated in a Storm, and taken by a *French* Privateer, taken again by a *Dutch* Privateer, and paid 80 *l.* Salvage. And it was ruled by *Holt* C. J. That the Voyage ought to be according to Usage, and that their going to the *Elb*, though in Fact out of the Way, was no Deviation; for till after the Year 1703, there was no Convoy for Ships directly from *Bremen* to *London*: And the Plaintiff had a Verdict. *Bond* v. *Gosfell*, *February* 14, 1704, *coram Holt* C. J. at *Nisi Prius* at *Guildhall*. *Salk.* 445.

Warranted to depart with Convoy has been resolved to import, by the Usage of Merchants, a Continuance with that Convoy as long as may be. 1 *Mod.* 287.

In Policies warranted to depart with Convoy, shall be intended without the wilful Default of the Master. 2 *Salk.* 443. *pl.* 8 *Mod.* Rep. 320. *pl.* 6 *Carth.* 216, 217. 1 *Mod.* 158. Cas. *Temp. Holt* 46.

If a Ship warranted to depart with Convoy, goes out of the way, in order to have the Opportunity of Convoy, this is no Deviation. *Burt.* Rep. 347.

A Ship which ſails with the Convoy, tho' hindered by the Weather from taking ſailing Orders, departs with Convoy. 2 *Stra.* 1250, 1251.

A Ship warranted to depart with Convoy is inſured during her Voyage, and in her Way to the general Rendezvous. 2 *Stra.* 1285.

XIII. A Merchant enſures his Goods from *London* to *Sallee*, and there to be landed; the Factor, after Arrival, having Opportunity, ſells the Cargo aboard the ſame Ship without ever unlading her, and the Buyer agrees for the Freight of thoſe Goods for the Port of *Venice*; before ſhe breaks Ground the Ship takes Fire, the Aſſured and Buyer are abſolutely without Remedy; for the Property of the Goods becoming changed, and Freight being contracted *de novo*, the ſame was as much as if the Goods had been landed.

Locin. l. 2. *c.* 5. §. 9. And by the Laws of *Antwerp* there is a time allotted after the Ship's arrival at her Port, how long the Adventure is to be borne by the Enſurers, which is about 15 days.

And ſo it is, if the Factor after her Arrival had contracted for Freight to another Port, and the Ship had happened to take Fire, the Aſſurers are hereby abſolutely diſcharged for ever.

Art. 13. *Aſſecur Antwerp.* Caſe of Monſieur *Gourdan* Governor of *Calais*, *Anno* 1585.

XIV. If a Ship be enſured from *London* to and blank being left by the Lader to prevent her Surprize by the Enemy, in her Voyage ſhe happens to be caſt away, though there be private Inſtructions for her Port, yet the Enſured ſit down by the Loſs by reaſon of the Uncertainty. So a Blank is left in the Policy for the Value of the Ship or Lading, if a Loſs, and there be not Words that may ſupply, the Enſured may endanger the Policy.

Stiles 132. 2 *Rolls* Abr. 248.

A taking of a Ship (that is inſured) by Pirates is to be underſtood, the Perils of the Sea.

Where

Where Goods are redeemed from a Pirate, Contribution muſt be paid by all, becauſe the Redemption is made for the Safety of all; but if the Pirate be once Maſter of all, and yet take but ſome ſpecial Goods, whether from Ship or Merchant, and not as a Contentation for ſparing of the reſt, in this Caſe, becauſe the Remainder is not aſſured thereby, but freely ſpared, no Contribution is to be made for the taken Goods to charge any Aſſurer with any part thereof. So Contribution ſhall be made for Goods ſpoiled by wet, or other accident. Again, if it be needful to lighten a Ship for her eaſier entry into Harbour or Channel, two parts of the Loſs fall upon the Goods, and the third upon the Ship; unleſs the Ship is more worth than the Lading, and the Charge of the Goods be not the Cauſe of her inability to enter, but ſome bad Quality proceeding from the Ship itſelf, or that otherwiſe it be provided in the Charter-party. *Lex Mercat.* 109.

XV. After Notice of Loſs, the Enſured, (if he doth think fit) for that he hath enſured the moſt of his Adventure, or that he would have the Aſſiſtance of the Aſſurers; when there is hope of Recovery of the Adventure, he may then make a Renunciation of the Lading to the Aſſurers, then he comes in himſelf in the nature of an Enſurer, for ſo much as ſhall appear he hath borne of the Adventure beyond the Value enſured. *Locinius, l. 2. c. 5. §. 8.*

But if the Merchant ſhall not renounce, yet there is a Power given in the Policy for him to travel, purſue, and endeavour a Recovery (if poſſible) of the Adventure after a Misfortune to which the Aſſurers are to contribute,

tribute, the ſame being but a trouble to give eaſe to the Aſſurers.

If prohibited Goods are laden aboard, and the Merchant enſures upon the general Policy, which always contains theſe Words: *Of the Seas, Men of War, Fire, Enemies, Pirates, Rovers, Thieves, Jettſons, Letters of Mart and Countermart, Arreſts, Reſtrainments, and Detainments of Kings and Princes, and all other Perſons, Barretry of the Maſter and Mariners, and of all other Perils, Loſſes, and Miſfortunes whatſoever they be, and howſoever they ſhall happen to come, to the hurt and detriment of the Goods and Merchandize, or any Part or Parcel thereof*; whether if ſuch Goods be lawfully ſeized as prohibited Goods, the Enſurers ought to anſwer? It is conceived they ought not; and the difference hath been taken, where Goods are lawful at the time of lading to be imported into that Country, for which they are conſigned for; but by Matter *ex poſt facto* after the lading they become unlawful, and after Arrival are ſeized, there the Aſſurers muſt anſwer by virtue of the Claule, *And all other Perils*, &c. But if the Goods were at the time of lading unlawful, and the Lader knew of the ſame, ſuch Aſſurance will not oblige the Aſſurers to anſwer the Loſs; for the ſame is not ſuch an Aſſurance as the Law ſupports, but is a fraudulent one.

In hoc contractu bona fide verſandum eſt, ut natura ultro citroque obligationis poſtulat. Locinius, *lib.* 2. *cap.* 5. §. 8.

A Policy was made from *Cadiz* to *Vera Cruz* in *New Spain*, upon Monies lent upon Bottomry, and upon any kind of Goods and Merchandize whatſoever loaden aboard the Good Ship called the *Nouſtra Seigniora del Carmen* and *Mary Magdalen*, the Adventure beginning immediately from the lading before

fore a Day to come, and the Monies from the Time they were to be lent, and ſo to continue from *Cadiz* to *Vera Cruz*, and after Delivery, with Proviſo to ſtay at any Port or Place in her Voyage, and likewiſe to touch at *Porto Rico*, and there to lade and unlade without any Prejudice to the Enſurance; the Cargo being valued at 1700 *l. Sterl.* without Account, &c. againſt *Seas, Men of War, Fires, Enemies, Pirates, Rovers, Thieves, Jettizons, Letters of Mart and Countermart, Surprizals at Sea, Arreſts, Reſtraints and Detainments of all Kings, Princes, and People, of what Nation, Condition, or Quality ſoever.* The Ship being laden at *Cadiz*, did depart towards *Vera Cruz*, and before Arrival there, touching at *Porto Rico*, the Goods were there ſeized and arreſted. In an Action brought upon the Policy, the Defendant came in and pleaded, That the Ship at her arrival in her Voyage at the Port of *Rico*, was laden with Goods and Merchandize prohibited, and the ſame, and alſo the Ship, did there become forfeited by Default of the Proprietors, and was there ſeized and taken. The Queſtion was, if the Owners ſhould enſure, and then order prohibited Goods to be laden, whether that an Arreſt upon the ſame ſhould entitle them to a Recovery? The ſecond Objection was, If (as the Defendant had pleaded this Plea) the ſame were good? As to the firſt, the Court did all incline, that the Enſurance ought to be *bona fide*, i. e. the Reſtraint ought to be of ſuch Goods as by Law were not reſtrainable; but ſurely that cannot be, for the Intention of Polices are to warrant the Perils of all manner of Goods in all manner of Caſes. So that if there be a loading

Houbland v. Harriſon. Hill. 31, 32. Car. 2. B. R. Judg. in Paſch. ſeq.

loading *bona fide*, be it prohibited or not, the ſame in Caſe of Loſs ought to be anſwered, unleſs it were a fraudulent Contrivance: But to the ſecond it was reſolved, That the Plea was inſufficient; for admitting the ſame ſhould not oblige the Enſurer, yet becauſe the Defendant did not ſhew that the Goods were laden either by the Enſured, or by their Factor or Order, otherwiſe the ſame ſhould not conclude them; for perhaps the Maſter or his Mariners, or a Stranger, might load them on board without Order, ſo that upon the meer Inſufficiency of the Manner of Pleading, and not of the Matter, the Court gave Judgment for the Plaintiff.

Like Judgment was given againſt *Lethuleir adſ. Houbland, Trin.* 32 *Car.* 2. *in B. R. Rot.* 168.

But if a Merchant will freight out Wool, Leather *, and the like, or ſend out Goods in a Foreign Bottom †, and then make a Policy, the Ship happens afterwards to be taken, by reaſon of which there becomes a Forfeiture of Ship and Lading, the Enſurers are not made ſubject to anſwer the Damage; for the very Foundation was illegal and fraudulent, and the Law ſupports only thoſe Aſſurances that are made *bona fide*; for if otherwiſe, and Men could be enſured againſt ſuch Actions, they would deſtroy Trade, which is directly to thwart the Inſtitution and true Intentions of all Policies.

* 12 *Car.* 2. *cap.* 32. 14 *Car.* 2. *cap.* 7.

† 12 *Car.* 2. *cap.* 18.

By an Act 12 *Geo.* 2. *c.* 21. *Sect.* 29. All and every Perſon or Perſons whatſoever, who, by way of Inſurance, ſhall undertake or agree, that any Wool, Wool-Fells, Wool-Flocks, Mortlings, Shortlings, Cruels, Worſted, Woollen, and Bay Yarn, Mattreſſes and Beds ſtuffed with combed Wool, or Wool fit for combing, ſhall be carried or conveyed to any Parts beyond the Seas, from any Part of *Great*

Great Britain or *Ireland*, forfeits 500 *l.* to the Uſe of the Informer, over and above all other Forfeitures and Penalties.

But if Goods ſhould happen to be lawfully enſured, and afterwards the Veſſel becomes diſabled, by reaſon of which they relade by Conſent of the *Super-Cargo* or Merchant into another Veſſel, and that Veſſel, after Arrival, proves the Ship of an Enemy, by reaſon of which the Ship becomes ſubject to Seizure; yet in this Caſe Enſurers ſhall anſwer, for that this is ſuch an Accident as is within the Intention of the Policy.

Ritterſhuſ. ad leg. contract. 23. *de Reg. jur. cap.* 18. *p.* 236, 237. *Stypman dicto loco num.* 335.

Several Men lade aboard Salt, without Diſtinction, not putting them in Sacks, and the like; the Ship arrives, the Maſter delivers to their Principals according to their Bills of Lading as they come one by one, it falls out that ſome of the Salt is waſhed or loſt by reaſon of the Dampneſs of the Ship, and that the two laſt Men cannot receive their Proportion. There are in this Caſe theſe Things to be conſidered:

1. Whether the Maſter is bound to deliver the exact Quantity?
2. Whether thoſe that have received this Loſs can charge the Aſſurers?
3. Whether the Aſſurers can bring in the firſt Men for a Contribution, they having their Salt delivered to them compleatly?

Certainly the Maſter is not bound to deliver the exact Quantity, nor is he obliged to re-deliver the very ſpecifical Salt, but only as Men are to repay Money or Corn by the Diſtinction in a Bag or Sack, and out of them; but if the Fault was in not pumping, keeping dry his Deck, and the like, there

Laſtlow v. Tomlinſon, Hob. 88. *Jenk.* 287. *Leg. quod convenit de verb. ob.*

è contra:

è contra: Though perhaps there may be ſpecial Agreement.

Beſides, this is a Peril of the Sea which the Maſter could not prevent, and of neceſſity he muſt deliver to one firſt before another.

As to the ſecond, It is no Queſtion but that the Aſſurers ſhall anſwer. But whether they ſhall bring in the firſt Men for Contribution, may be ſome Doubt.

D. Leg. in monare.

It has been conceived by ſome, that they ought not; for they delivered their Salt to the Maſter *tanquam in Creditum*, and were not to expect the Re-delivery of the ſame ſpecifical Salt.

But by others it has been conceived they ought to contribute *pro ratione*; for as Goods of neceſſity, ſome muſt be ſtowed in the Hold, and that ſuch Goods ſeldom eſcape the Peril of the Sea; ſo the reſt muſt of neceſſity contribute to that Misfortune, and ſo make no Diſtinction.

The Bills of Lading are very uſeful to ſettle the Difference between the Aſſurer and the Aſſured, of which there are three Parts, one ſent over Sea, the other left with the Maſter, and the laſt remaining with the Lader.

2 *Black.* Com. 467.

The Learning relating to Marine Inſurances hath of late Years been greatly improved by a Series of judicial Deciſions, which have now eſtabliſhed the Law in ſuch a Variety of Caſes, that (if well and judiciouſly collected) they would form a very complete Title in a Code of commercial Juriſprudence. But, being founded on equitable Principles, which chiefly reſult from the ſpecial Circumſtances of the Caſe, it is not eaſy to reduce them to any general Heads in mere elementary Inſtitutes. Thus much may

may however be ſaid; that being Contracts, the very Eſſence of which conſiſts in obſerving the pureſt good Faith and Integrity, they are vacated by any the leaſt Shadow of Fraud or undue Concealment: And, on the other hand, being much for the Benefit and Extenſion of Trade, by diſtributing the Loſs or Gain among a Number of Adventurers, they are greatly encouraged and protected both by Common Law and Acts of Parliament. But, as a Practice had obtained of inſuring large Sums without having any Property on board, which were called Inſurances, *Intereſt or no Intereſt*; and alſo of inſuring the ſame Goods ſeveral Times over; both of which were a Species of Gaming, without any Advantage to Commerce, and were denominated *wagering* Policies: It is therefore enacted by the Statute 19 *Geo.* II. *c.* 37. that all Inſurances, Intereſt or no Intereſt, or without farther Proof of Intereſt than the Policy itſelf, or by way of gaming or wagering, or without Benefit of Salvage to the Inſurer, (all which had the ſame pernicious Tendency) ſhall be totally null and void, except upon Privateers, or Ships in the *Spaniſh* and *Portugueſe* Trade, for Reaſons ſufficiently obvious; and that no Re-aſſurance ſhall be lawful, except the former Inſurer ſhall be inſolvent, a Bankrupt, or dead; and laſtly that, in the *Eaſt-India* Trade, the Lender of Money on Bottomry, or at *reſpondentia*, ſhall alone have a Right to be inſured for the Money lent, and the Borrower ſhall (in caſe of a Loſs) recover no more upon any Inſurance than the Surplus of his Property, above the Value of his Bottomry or *reſpondentia* Bond.

See *Bur.* Rep. 492, 493.

CHAP.

CHAP. VIII.

Of Priſage and Butlerage.

I. *What* Priſage *is, and where taken, and of what.*
II. *Merchant Strangers exempted from the ſame.*
III. *When due, and the exemption of the Citizens of* London *from the ſame.*
IV. *What Citizens are capable, and where not.*
V. *A Foreigner imports and makes a Citizen Executor and dies; whether he ſhall have the Benefit of the Immunity.*
VI. *Where a Foreigner ſells to a Citizen before Bulk be broken, the Vendee ſhall be chargeable.*
VII. *Where a Grant to diſcharge a particular Ship ſhall be good; and where a Grant to particular Perſons ſhall be otherwiſe.*
VIII. *Of* Butlerage, *what, and who are exempted.*
IX. *Where the King becomes entituled to thoſe Duties.*
X. *A Grant to be free of all Cuſtoms, Impoſitions,* &c. *extends not to* Priſage *and* Butlerage.
XI. *Cinque Ports exempted from* Priſage.

I. PRISAGE is a certain taking or purveyance for Wine to the King's uſe; the ſame is an antient Duty which the Kings of *England* have, time out of mind, had and received; the manner hath been by taking of every Ship or Veſſel that ſhould come into this Realm, if ten Tuns, to have for Priſage one Tun: And if it contain twenty Tuns or more, to have two Tuns, (*viz.* one Tun before the Maſt, and the other behind the Maſt) paying 20 *s.* for each Tun. This antient Immunity they have enjoyed as a Flower of the Crown, and by ſome has been conceived not grantable away without Act of Parliament. But yet in 6 *E.* 3. *fol.* 3. Caſe 15. mentions the ſame to be grantable over.

Dyer 92, 42, 165.
Fleta, l. 2. *c.* 2.
Salk. 617.

Such

Such Wine may be taſted, and the fulleſt Veſſels may be taken for Priſage. And if a Ship has ten Tuns, then only one Tun is to be taken; and none if there be but nine Tuns; unleſs there be Evidence of Fraud. But if there be nine Tuns and an half, that is Fraud apparent; and then one Tun ſhall be taken. *Hard.* 477.

II. King *Edward* the Firſt having laid ſome Impoſitions on the Merchants, which, in *Anno* 25. of his Reign, being taken away, with Promiſe, that neither he nor his Succeſſors ſhould do any ſuch thing without Aſſent of Parliament; in the one and thirtieth of his Reign they granted him an Increaſe of Cuſtoms, in lieu of which he granted them many Immunities, as Releaſe of *Priſage*, &c. *Rot. Parl.* 31. *E.* 1. *cap.* 1. & 2.

III. *Priſage* is not due till the unlading, or that which is commonly called breaking of Bulk; for the Words are *De qualibet navi important vina, & diſonerant inde.* King *Edward* the Third by his Charter dated 6 *Martii Anno Regni Primo*, granted his Royal Charter of Diſcharge to the Mayor, Commonalty, and Citizens of *London*, *in hæc verba*, (viz.) *Quod de vinis Civium nulla priſa fiant, ſed perpetuè inde eſſent quieti, &c.* which was afterwards allowed in the *Exchequer*. *Yelv.* 198. *Kenicot v. Bogan.* 2 *Bulſt.* 250.

IV. It is not every Citizen that is capable of this Privilege, but only thoſe that are reſident within the City: And ſo it was ruled in the Caſe of one *Knowles*, who being a Citizen and free Grocer of *London*, removed his Houſhold *cum pannis*, and did dwell at *Briſtol*, but yet kept his Shop in *London*; and a Ship of his arriving with Wines at *London*, and being unladen, the Priſage was demanded; he claimed the Benefit of Diſcharge. It was adjudged, he was not capable of the ſame: 4 *H.* 6, *Rot.* 14. *Knowle's* Caſe 3 *Bulſtr.* 4. *Calth* 35.

For he that will claim the Benefit of his Diſcharge ought to be *Civis & Incola commorans.*

3 *Bulſtr.* 4, 5. By 24 *H.* 6. (a private Act of Parliament) Complaint was made, That the Lord Mayor of *London* would make Strangers Citizens; It was there declared, that this Benefit to be diſcharged from Payment of *Priſage*, did not extend to ſuch Citizens as were *donati*, made free, but unto thoſe Citizens only which *commorant incolant*, and are reſident in the City.

3 *Bulſtr.* 3. V. If a Foreigner brings a Ship laden with Wines, into the Port of *London*, and then makes a Citizen his Executor and dies, he ſhall not have the Benefit of this Immunity from Payment of *Priſage* for theſe Wines, for that they are not *bona Civium.*

3 *Bulſtr.* 10. VI. If a Foreigner arrives with a Ship laden with Wines at a Port with an Intention to unlade, and before the Goods are entered, or Bulk is broken, he ſells them to a Citizen, *Priſage* ſhall be paid notwithſtanding, for it was never the Intent of the King in this his Grant to diſcharge a Citizen in ſuch a manner.

3 *Bulſt.* 10, 11. VII. If the King does diſcharge ſuch a Ship of *J. S.* being at Sea, particularly naming the ſame, from the Payment of *Priſage*, and he dies before the Ship arrives, no Duty can be demanded.

Hanger's Caſe, *Catbr. Rep.* 3. But it has been held, if a particular Perſon has a Grant to him to be diſcharged of his
3 *Bulſtr.* 1. Goods, and he dies before the Arrival, the
1 *Ro.* 138. Duty ſhall be paid.

Vide the Caſe at large, for the Court was divided in Opinion.

Quo Warranto's were brought againſt three Archbiſhops of *York*, to ſhew Cauſe why they demanded to have *Priſage* for Wines brought into the Port of *Hull:* The two firſt pleaded to have only the firſt Taſte, and a pre-emption after

after *Priſage* paid; but the third pleaded a Charter of 15 *E.* 2. by force of which he claimed the ſame; and ruled not good. But though the Charter might be good, yet it was held in that caſe, a diſclaimer by the Predeceſſor ſhould bind the Succeſſor. Note, the Duke of *Ormond* in *Ireland* had an Inheritance in the Priſage of Wines by the King's Charter. But the ſame was forfeited. 2 *G.* 1.

Archbiſhop of *York*'s Caſe.

Sir *John Davies* in the Caſe of Cuſtoms.

VIII. *Butlerage* is a Cuſtom due from Merchant-Strangers, of 2 *s.* upon every Tun of Wine brought into this Realm by them; but *Engliſhmen*, pay it not.

King *John* granted to the Merchants of *Aquitain*, trading for Wines thence into *England*, divers Liberties, and amongſt others, *Libertatibus conceſſis Mercatoribus vinetariis de Ducatu Acquitaniæ reddendo Regi & hæredibus ſuis* 2 s. *de quolibet dolio vini ducti per eoſdem infra Regnum Angliæ vel poteſtatem Regis.*

In libro Rubro in Scaccario Remem fol. 265. *Rot. Chartarum, Anno* 31. *E.* 1. *num.* 44. called *charta Mercatoria.*

All Merchants-Strangers in conſideration of the Grant to them by the King of divers Liberties and Freedoms, *Conceſſerunt de quolibet dolio vini quod adducent vel adduci facerent infra Regnum, &c. ſolvent nobis & hæredibus noſtris nomine Cuſtumæ duos ſolidos, &c.*

See the Charter at large in the Chapter of Cuſtoms.

It is called *Butlerage*, becauſe the King's chief Butler doth receive it. If any Perſon free of *Priſage* or *Butlerage*, cuſtoms Wines of a Perſon not free of *Priſage* or *Butlerage*, he forfeits double the Value of the *Priſage* of the Wines ſo cuſtomed.

1 *H.* 8. *c.* 5. 2 *Ed.* 6. 22.

By *Stat.* 1. *H.* 8. *ch.* 5. Making falſe Entry to defraud the King of *Priſage* and *Bulerage*, infers a Forfeiture of double the Value. And by *Stat.* 2. and 3 *E.* 6. *ch.* 22. of the Offender's Goods and Chattels, provided the

Proſecution be within three Years. One Moiety to the King, the other to the Informer.

IX. Breaking of Bulk is that which entitles the King to the Duty: For if a Merchant imports Wines to the Number of 20 Tuns, yet if he unlades but part, as nine or four Tuns, yet the King ſhall have the entire *Priſage*; and though the Cuſtom ſeems to declare, that the taking *muſt be as well before as after the Maſt*, yet is not the Officer tied to that Strictneſs, but may take where he pleaſes; for two Tuns are the King's due; for otherwiſe he might be cozened, the Freighter perhaps lading other Commodities aboard after the Maſt.

Kenicot v. Bogan, Yelverton 198. 2 *Bulſtr.* 250. *Boyton's* Caſe, 3 Rep. 44.

If there be but one Tun taken out, yet the Duty muſt be paid: The reaſon is, for that otherwiſe the Officers ſhould be obliged to travel perhaps all over the Kingdom.

X. The King granted to a *Venetian* Merchant that he ſhould be quit, *de omnibus Cuſtumis, Subſidiis, & Impoſitionibus, & omnibus aliis denariorum ſummis debitis & ſolubilibus pro quibuſcunque Merchandizis importandis*; and that he ſhould be as free as the Citizens of *London*. In that caſe it was adjudged in the *Exchequer*, That by that Grant the King did not diſcharge him of *Priſage*, becauſe the *Priſage* was not ſpecially expreſſed in the Grant, although that the City of *London* were by a ſpecial Charter freed of *Priſage*.

Vouched in the Caſe of Cuſtoms in Sir *John Davies's* Reports.

XI. The Cinque Ports are likewiſe diſcharged of *Priſage*; yet if a Citizen of *Saliſbury* ſhould conſign Wines to be delivered and unladed at *Dover*, the bare Diſcharge of the Goods at that Port will not acquit the Importer from the Duty; for it is not the Party's Importation, but his Domicil that qualifies him for the Benefit of his Immunity.

Cl. 1 *E.* 1. *m.* 5.

Bulſtr. 3 *part fol.* 1.

CHAP.

CHAP. IX.

Of Pilots, Warfage, Primage, Average, Lodmanage.

I. *Of the* Pilot's *Charge till the Ship is brought to her Place or Bed.*
II. *If the Ship is likely to miſcarry, what the Ships Crew may do at ſuch Time.*
III. *Of ignorant Pilots, their Puniſhment, and if the Ship miſcarries, who ſhall anſwer.*
IV. *Of Wharfage, and where the Wharfingers ſhall anſwer, and where not.*
V. Primage *and* Petty Lodmanage *where due, and for what; and if the Ropes break, whether the Maſter or Wharfinger ſhall anſwer.*
VI. *Petty* Average *where due, and for what, and Hat-money.*
VII. Lodmanage *where due, and for what.*

I. BY the Laws of *Oleron*, after that the Pilot hath brought the Ship to ſure Harbour, he is no further bound or liable; for then the Maſter is to ſee her bed and to her lying, and bear all the reſt of her Burthen, Charge, and Danger, except that of the Act of God: So that before ſhe comes to her place or bed, and while ſhe is under the Pilot's charge, if ſhe or her Goods periſh, or be ſpoiled, the Pilot muſt make good the ſame.

II. By the Laws of *Oleron*, if his Fault is notoriouſly groſs, that the Ships Crew ſees an apparent Wreck, they may then lead him to the Hatches, and ſtrike off his Head; but the Laws of *England* allow no ſuch haſty Execution. *Leg. Oleron, cap.* 23.

By the Laws of *Denmark*, an ignorant Pilot is to paſs thrice under the Ship's Keel.

The Maſter generally in the Charter-party covenants to find a Pilot, and the Merchant covenants to pay him his Pilotage.

III. But if a Ship ſhould miſcarry coming up the River, under the charge of the Pilot, it has been a Queſtion, whether the Maſter ſhould anſwer in caſe of the inſufficiency of the Pilot; or whether the Merchant may have his Remedy againſt both? It hath been conceived, the Merchant hath his election to charge either; and if the Maſter, then he muſt lick himſelf whole of the Pilot.

After *Aug.* 1, 1717, no Perſon ſhall pilot any Ship from *Dover*, &c. unleſs he have been examined, &c. by the Maſter, &c. of Trinity-houſe, and be admitted into that Society.

By Stat. 3 *Geo.* 2. *c.* 13. *Sect.* 1. If any Perſon ſhall take upon him to conduct or pilot any Ship, by or from *Dover*, *Deal*, or the Iſle of *Thanet*, to any Place on the River *Thames* or *Medway*, before he has been firſt examined by the Maſter and Wardens of the Society or Fellowſhip of Pilots of the *Trinity-houſe* of *Dover*, *Deal*, and the Iſle of *Thanet*, touching his Ability, and approved and admitted into the ſaid Society at a Court of Loadmanage, by the Lord Warden of the Cinque Ports, or his Deputy, and the Maſter and Wardens; ſuch Perſon for the firſt Offence ſhall forfeit 10 *l.* for the ſecond 20 *l.* and for every other Offence 40 *l.* to be recovered with Coſts by any Perſon in the Court of Admiralty for the Cinque Ports, in caſe ſuch Offender live and be found within the Juriſdiction of the ſaid Court, or elſe by Action in any of the Courts at *Weſtminſter*; one Moiety of the Forfeiture to go to the Informer, the other to the Maſter and Wardens of the ſaid Society, to be diſtributed amongſt ſuch ſuperannuated Pilots, and the Widows of Pilots, of the ſaid Society, as the Maſter and Wardens ſhall appoint.

First Offence 10 *l.* ſecond 20 *l.* and every other 40 *l.*

How the Penalty ſhall be recovered and diſpoſed of.

By

By *Sect.* 2. This Act ſhall not prevent the Maſter or Mate of any Ship, or part Owner, reſiding at *Dover*, *Deal*, or the Iſle of *Thanet*, from piloting his own Ship; nor ſubject any Perſons to the Penalties, who ſhall be hired by any Maſter to pilot his Veſſel; provided none of the Society, within one hour after ſuch Ship ſhall arrive at any of the ſaid Places, be ready to pilot the ſame.

Maſter, &c. reſiding at *Dover*, &c. may pilot their own Ships, if none of the Society be ready ſo to do.

By *Sect.* 3. Maſters of Merchant Ships may make choice of ſuch Pilot of the Society as they ſhall think fit, and no Perſon ſhall continue in the Society, who ſhall not pilot a Ship at leaſt twice in one Year, (unleſs prevented by Sickneſs) to and from the Places abovementioned.

Maſters of Merchants Ships may chooſe their Pilots, and Members of the Society ſhall pilot Ships twice a Year.

By *Sect.* 4. For conducting any Ship from *Dover*, *Deal*, or the Iſle of *Thanet*, to any Places on the River *Thames* and *Medway*, the following and no greater Prizes ſhall be taken, *viz.* for every Ship drawing ſeven foot Water, 3 *l.* 10 *s.* eight foot 4 *l.* nine foot 4 *l.* 10 *s.* ten foot 5 *l.* eleven foot 5 *l.* 10 *s.* twelve foot 6 *l.* thirteen foot 6 *l.* 10 *s.* fourteen foot 7 *l.* fifteen foot 7 *l.* 10 *s.* ſixteen foot 8 *l.* ſeventeen foot 8 *l.* 10 *s.* and no Allowance to be made for odd Inches.

Prizes of piloting.

By *Sect.* 5. If any Pilot ſhall negligently loſe the Ship under his Care, and be thereof convicted, he ſhall for ever after be incapacitated for acting as a Pilot; and the Number of ſuch Pilots ſhall not be leſs than 120, whoſe Names, Ages, and Places of abode, ſhall every 25th of *March* be affixed in ſome public Place, at the Cuſtom-houſes at *London* and *Dover*; and for not returning ſuch Liſt, the Maſter and Wardens of the Society ſhall forfeit 10 *l.* to be recovered in the Cinque

Pilot loſing a Ship, incapacitated from acting as a Pilot.

To be 120 in number, and their Names, &c. to be affixed, &c.

the Maſter, &c. to return ſuch Liſt on Penalty of 10 *l.*

Ports by any Perſon who ſhall ſue for the ſame.

Not to hinder any from aſſiſting Ships in diſtreſs, Maſters, &c. appointed to examine into the Ability of Pilots, ſhall be ſworn.

By *Sect.* 7. This Act ſhall not hinder any Perſon from aſſiſting a Ship in Diſtreſs.

By *Sect.* 8. The Maſter and ſuch two Wardens of the Society, as ſhall be appointed to examine any Perſon on his being admitted a Pilot, ſhall take the following Oath, to be given by the Regiſter of the Court of Loadmanage, *viz.*

The Oath.

I A. B. *do ſwear, that I will impartially examine and enquire into the Capacity and Skill in the Art of Pilotage over the* Flats, *and round the* Long Sand Head, *and the Coaſts of* Flanders *and* Holland, *and will make true and ſpeedy Return thereof to the Lord Warden of the Cinque Ports for the time being, or his Deputy, without Favour, Affection, or Reward.*

So help me God.

Not to extend to the Corporation of *Trinity Houſe* of *Deptford Strond.*

By *Sect.* 9. This Act ſhall not extend to the taking away any Liberties veſted in the Corporation of the *Trinity-Houſe* of *Deptford Strond.*

To be taken as a public Act.

By *Sect.* 10. This Act ſhall be a public Act.

N. B. This Statute is continued to *March* 25, 1778, by Stat. 4 *Geo.* 3. *c.* 12. *Sect.* 1.

Clauſe impowering the Lord Warden of the Cinque Ports, with the Aſſent of the Commiſſioners of Loadmanage,

By Stat. 7 *Geo.* 2. *c.* 21. *Sect.* 14. The Lord Warden of the Cinque Ports, or his Deputy, with the Aſſent of the Commiſſioners of Loadmanage, and of the Maſters and Wardens of the Society of Pilots of the *Trinity-Houſe* of the Cinque Ports, at a Court of Loadmanage, may, during the Continuance

ance of 3 *Geo.* 1. *c.* 13. make Rules and Orders for the better Government and Regulation of the Pilots reſiding at *Dover*, *Deal*, and the Iſle of *Thanet*, and may order a ſufficient Number of them, not leſs than eighteen, to ply conſtantly at Sea, to be ready to conduct Ships up the Rivers of *Thames* and *Medway*; and the Lord Warden, *&c.* at a Court of Loadmanage, may ſuſpend or deprive any of the ſaid Pilots for breaking the ſaid Rules or Orders; and if any Pilot, during ſuch Suſpenſion or Deprivation, ſhall take upon himſelf to conduct any Ship by or from *Dover*, *Deal*, or the Iſle of *Thanet*, to any Place upon the Rivers of *Thames* or *Medway*, he ſhall be liable to all Penalties provided by the ſaid Act, againſt ſuch Perſons as ſhall conduct Ships from and to the Places aforeſaid, without being firſt examined and approved of by the Maſter and Wardens of the ſaid Society.

&c. to make Orders for the better Government of Pilots at *Dover*, *Deal*, &c.

N. B. Continued as the above Stat. of 3 *Geo. c.* 23.

IV. *Wharfage* is Money paid for landing Wines at a Wharf, or for ſhipping or taking in Goods into a Boat or Barge; they commonly keep Boats or Lighters of their own for the carrying out and bringing in of Goods, in which, if a Loſs or Detriment happens, they may in ſome Caſes be made liable.

22 *Car.* 2. *c.* 11. §. 21.

An Action of the Caſe grounded on the Cuſtom of the Realm, was brought againſt the Defendant, Maſter of a Wharf, for not ſafe delivering of Goods, *&c.* The Caſe appeared to be thus: The Maſter unladed a Bail of Silk into the Warfinger's Lighter, and ſent part of his Mariners to convey it aſhore; it happened that the Goods were ſtole:

Randall v. Hilton and *Butler*, *Paſch.* 26 *Car. in B. R.*

ſtole: The Queſtion was, whether the Wharfinger or the Maſter ſhould anſwer? Upon a Trial at *Guildhall* before the Lord Chief Juſtice *Hale*, it was there ruled, That the Maſter was liable, and not the Wharfinger; for till they are landed, the Maſter hath them under his Power: But if Goods are to be ſent aboard, there if they miſcarry in their Paſſage the Wharfinger muſt anſwer.

32 *H.* 8. 14. V. *Primage* and *Petty-Lodmanage* is likewiſe due to the Maſter and Mariners for the Uſe of his Cables and Ropes to diſcharge the Goods, and to the Mariners for loading and unloading of the Ship or Veſſel; it is commonly about twelve Pence *per* Tun.

Leg. Oleron, cap. 10. If the Ropes break in hoiſting of Goods out of the Ship into the Lighter or Boat, the Maſter muſt anſwer if the Goods be damnified or loſt.

But if the Ropes break at the Crane in taking them out of the Lighter, (although till they are landed they are not out of the Maſter's Cuſtody) yet the Wharfinger ſhall anſwer.

Some conceive that the Average mentioned in the Bills, is that which is the Average or Contribution for loſſes. VI. *Petty Average* is another little ſmall Duty which Merchants pay to the Maſter, when they only take Tunnage over and above the Freight; the which is a ſmall Recompence or Gratuity for the Maſter's Care over the Lading; and in the Bills of Lading they are expreſſed after Freight, together with *Primage* and *Average* accuſtomed.

The *French* Ships commonly term the Gratuity *Hat-money*, and our *Engliſh* Merchants pay it our Maſters over the Freight; it is ſometimes more, ſometimes leſs; two or three Pieces.

VII. *Loadſman*

VII. *Loadſman* is he that undertakes to bring a Ship ſafe through the Haven to the Key or Place of Diſcharge; and if through his Ignorance, Negligence, or other Fault, he ſuffereth the Ship or Merchandiſe to periſh, an Action lies againſt him at the *Common-Law*; and ſo by ſome conceived he may be puniſhed in the Admiralty, but not in both. *Roughton* Arctic Enquiry, *fol.* 27, 28.

The Hire is called *Lodmanage*, the which the Pilot receives of the Maſter for conducting the Ship up the River, or into the Port to her convenient Bed.

If two Ships lie in a Harbour, and the Anchor of one is feared may occaſion Damage to the other, after requeſt and refuſal (and there be probable Cauſe) the other may take up the Anchor, and let the ſame down at a further Diſtance, and the ſame if oppoſed or hindred, and any Damage happen thereby, they are to make full Satisfaction; ſo it is if they lay out an Anchor, and neglect the placing of a *Buoy* to the Anchor, and Damage happen thereby, they are not only ſubject to be puniſhed in the Admiralty, but likewiſe to render Satisfaction to the Party damnified. *Per Leg. Oleron, cap.* 15.

If two Ships be in the River, and the one falls foul on the other, both being laden, by the Law Marine the Contribution is to be in common, and to be equally divided and appraiſed half by half; but then the *Mariners* muſt ſwear there was no Fault in them: For otherwiſe one that hath an old rotten Veſſel, which he can no ways diſpoſe of, may ſo order the Matter, as to lay her in the way of a good Ship under Sail, ſo that the ſame may be anſwered in Damage: But when the Contribution *Per Leg. Oleron, cap.* 14.

Contribution is made equal, then the Contrivance will be avoided; but at the *Common Law* there can be no ſuch Judgment, for one of them muſt be found guilty; and if ſo, he muſt anſwer the other's Damage, and for his own he may ſit down by the Loſs.

CHAP. X.

Of Bills of Exchange.

I. *Of the Antiquity of* Exchange *by the* Hebrew *Law.*

II. *Of the Antiquity of* Exchange *by the* Romans.

III. *Of Exchanges by other Nations in imitation of thoſe People.*

IV. *Of the ſeveral ſorts of Exchanges, and of* Cambio commune.

V. *Of* Cambio *real, or Exchanges value for value.*

VI. *Of* Cambio ſicco, *or dry Exchanges.*

VII. *Of* Cambio fictitio, *or feigned Exchange.*

VIII. *Of the Exchanges uſed this day, and on what.*

IX. *How Exchanges are made, and upon Monies in* London.

X. *Monies paid generally, how repaid by Exchange, how an Action ſhall be brought for Guineas or Foreign Coin.*

XI. *Of Bills of Exchange payable at ſingle Uſance.*

XII. *Bills of Exchange at double or treble Uſance, and of the cuſtomary Uſances to certain places from* London *and* Amſterdam *to other places.*

XIII. *Of the nature of Bills of Exchange, and how eſteemed of by the Laws of* England.

XIV. *Bills drawn more than one, no prejudice to the Parties; and of the true meaſure of judging on Bills by Cuſtom.*

XV. *What amounts to an acceptance generally, and on refuſal where to be proteſted.* Indebitat. Aſſumpſit *upon a general Acceptance.*

XVI. *All*

XVI. *All the Drawers are made liable; and whether the Party to whom the Money is made payable, is bound to procure an Acceptance.*

XVII. *Proteſt, what is meant by the ſame; and where the ſame is neceſſary, and where not. Proteſt upon the Stat. of* 9 & 10 *Will.* 3. *cap.* 17.

XVIII. *Bill drawn on two Perſons, where the ſame is neceſſary, and where not*

XIX. *One Factor ſerves a Company, where a Bill of his accepted by one of the Company, obliges the reſt, and where not.*

XX. *What words amount to an Acceptance, and what not.*

XXI. *Where a Bill may be accepted for part, and what muſt be done with the Bill thereupon.*

XXII. *When a Countermand may legally be made, and when not.*

XXIII. *How the ſeveral Parties intereſted in a Bill of Exchange are obliged and fettered to each other.*

XXIV. *How a collateral Security may be annexed to a Bill, when the time is elapſed, for Non-payment.*

XXV. *Where the Proteſt is only neceſſary to be kept, and where that and the Bill muſt both be remitted.*

XXVI. *Bill loſt, what is neceſſary for the Parties intereſted in ſuch caſe to act.*

XXVII *Of blank Endorſements, the validity of the ſame.*

XXVIII. *A Bill once accepted, whether the ſame may be revoked; and whether it may be accepted to be paid at a longer time than is mentioned: And what Proteſts are then neceſſary to be made.*

XXIX. *Of Bills accepted for the honour of the Drawer, where the ſame ſhall oblige.*

XXX. *The time cuſtomary allowed for payment after failure of payment at the day.*

XXXI. *Of the Validity of ſpeedy Proteſts in relation to recover the Money to be paid on the Drawer.*

XXXII. *Bill accepted, and before the Day of payment the Acceptor is failing, what's neceſſary to be done in reference to the obtaining better Security.*

XXXIII. *Bills accepted for the honour of the Drawer, where turned into an Act, and remitted by him that gives honour to the Bill.*

XXXIV. *The*

XXXIV. *The Acceptor ready to pay, but the Party to whom made payable is dead, what is neceſſary.*
XXXV. *Cauſes general for a Proteſt, and where ſatisfaction to the Deliverer diſcharges all Parties.*
XXXVI. *Of Exchange by way of Credit.*
XXXVII. *One pays a Bill before it be due, and the Party to whom the ſame was paid, fails, where he ſhall be anſwerable to the Drawer notwithſtanding.*
XXXVIII. *Of Bills aſſignable over according to the Cuſtoms of Merchants, what Operation in* England.
XXXIX. *Where an Averment is neceſſary of Defendant's being a Merchant.*

I. THE Exchange for Monies is of great Antiquity as well by Obſervation of the *Hebrew* Cuſtoms, as thoſe of the *Romans*.

Upon the firſt of the Month *Adar*, Proclamation was made throughout all *Iſrael*, That the People ſhould provide their half *Shekels*, which were yearly paid towards the Service of the *Temple* according to the Commandment of *God*; on the 25th of *Adar*, then they brought *Tables* in the Temple, (that is, into the outward Court where the People ſtood) on theſe Tables lay the leſſer Coins, which were to furniſh thoſe who wanted half *Shekels* for their Offerings, or that wanted leſſer Pieces of Money in their Payment for *Oxen*, *Sheep*, *Doves*, and the like, which ſtood there in readineſs in the ſame Court to be ſold for *Sacrifices*; but this Supply, and furniſhing the People from thoſe *Tables*, was not without an *Exchange* for other Money, or other Things in lieu of Money, and that upon Advantage: Hence all thoſe that ſat at the Tables were called chief *Bankers*, or Maſters of the *Exchange*.

Exod. xxx. 31.

Moſes Kotſenſes, printed at *Venice*, *Anno* 1557, *de Siclis*, *fol.* 122. *Col.* 2.

II. By

II. By the *Romans* it is ſuppoſed to be in uſe upwards of 2000 Years, Monies being then elected out of the beſt of Metals, to avoid the tedious Carriage of Merchandize from one Country to another: So other Nations imitating the *Jews* and *Romans*, erected Mints, and coined Monies, upon which the Exchange by Bills was deviſed, not only to avoid the Danger and Adventure, but alſo its troubleſome and tedious Carriages.

Alex. Gendier, lib. 5. *cap.* 30.

III. Thus Kingdoms and Countries having by their Sovereign Authorities coined Monies, cauſed them to appoint a certain Exchange for Permutation of the various Coins of ſeveral Countries, without any tranſportation of the Coin, but giving *par pro pari* or *value for value*, with a certain Allowance to be made thoſe *Exchangers* for accommodating the Merchants.

IV. As Commerce became various, ſo Exchange numerous; but generally reduced to four, *Cambio commune*, *Cambio real*, *Cambio ficco*, and *Cambio fictitio*.

Cambio commune in *England*, was thoſe that were conſtituted by the ſeveral Kings, who having received Monies in *England*, would remit by Exchange the like Sum to be paid in another Kingdom. *Edward* the Third, to aſcertain the Exchange, cauſed Tables to be ſet up in moſt of the general Marts or Ports of *England*, declaring the Values of all or moſt of the foreign Coins of thoſe Countries where his Subjects held Correſpondence or Commerce, and what Allowances were to be made for having Monies to be remitted to ſuch Countries or Kingdoms.

Reg. Orig. 194. *Stat.* 5. *R.* 2. *cap* 2. 3 *H.* 7. 6.

V. *Cambio real*, was when Monies were paid to the Exchanger, and Bills were drawn, without

18 *E.* 3. *Acton Burnel.*

out naming the Species; but according to the Value of the ſeveral Coins, which two Offices afterwards were incorporated, and indeed was no more, but upon Payment of Monies here in *England* to be repaid the juſt Value in Money in another Country, according to the Price agreed upon between the Officer and Deliverer, to allow or pay for the Exchange of the Money, and the Loſs of Time.

VI. *Cambio ſicco*, or dry Exchange, is when a Merchant hath Occaſion for 500 *l.* for a certain Time, and would willingly pay Intereſt for the ſame; the Banker being deſirous to take more than the Statute gives, and yet would avoid the ſame, offers the 500 *l.* by Exchange for *Cales*, whereunto the Merchant agrees; but the Merchant having no Correſpondence there, the Banker deſires him to draw his Bill to be paid at double or treble Uſance at *Cales*, by *Robin Hood*, or *John a-Nokes* (any feigned Perſon) at the Price of Exchange then current; accordingly the Merchant makes the Bill, and then the Banker pays the Monies; which Bill the Banker remits to ſome Friend of his to get a Proteſt from *Cales* for Non-acceptance, with the Exchange of the Money from *Cales* to *London*, all which with Coſts, the Merchant is to repay to the Banker; ſometimes they are ſo conſcientious, as not to make above 30 *per Cent.*

The Uſury was firſt introduced by the *Jews* here in *England*. *Vide* 2 *Inſt.* 506.

VII. *Cambio fictitio*, when a Merchant hath Occaſion for Goods to freight out his Ship, but cannot well ſpare Money; the Owner of the Goods tells him he muſt have ready Money; the Buyer knowing his Drift, it is agreed, that the Seller ſhall take up the Monies by Exchange for *Venice*, or any other Parts;

parts; but then the Merchant muſt pay for exchange, and re-exchange.

So likewiſe where the Merchant is become indebted to the Banker, they are contented to ſtay, the Merchant paying exchange and re-exchange; the which he will moſt certainly compel him to do.

Theſe two laſt ways of grinding the Face of the generous Merchant was afterwards prohibited, but notwithſtanding it was found impoſſible to moderate the inequality of Exchanges, and to have value for value: So that at this day it ſeems to be a Cold that many an honeſt Man is apt to catch. 3 & 4 *H.* 7.

VIII. The juſt and true Exchange for Monies that is at this day uſed in *England*, (by Bills) is *par pro pari*, according to value for value; ſo as the *Engliſh* Exchange being grounded on the weight and fineneſs of our own Monies, and the weight and fineneſs of the Monies of each other Country, according to their ſeveral Standards proportionable in their valuation, which being truly and juſtly made, aſcertains and reduces the Price of Exchange to a Sum certain for the Exchange of Monies to any Nation or Country whatſoever: As for inſtance,

If one receives 100 *l.* in *London* to pay 100 *l.* in *Exeter*; this by the *par*.

But if a Merchant receives 100 *l.* in *London* to pay 100 *l.* at *Paris*, there the Party is to examine and compare the *Engliſh* weight with the weight of *France*, the fineneſs of the *Engliſh Sterling* Standard with the fineneſs of the *French* Standard; if that at *Paris* and that at *London* differ not in proportion, then the Exchange may run at one Price, taking the Denomination according to the Valuation of the

Monies of each Country; but if they differ the Price accordingly riſes or falls: And the ſame is eaſily known, by knowing and examining the real fineneſs of a *French* 5 *s.* Piece and an *Engliſh* 5 *s.* Piece, and the difference, which is to be allowed for the want of fineneſs or weight, which is the Exchange; and ſo proportionably for any Sums of Monies of any other Country, the which is called *Par*, or giving value for value.

But this Courſe of Exchange is of latter Years abuſed, and now Monies are made a meer Merchandize, and does over-rule Commodities, and Monies riſe and fall in Price according to the Plenty and Scarcity of Money.

IX. As Money is the common Meaſure of Things between Man and Man within the Realm, ſo is Exchange between Merchant and Merchant within and without the Realm; the which is properly made by Bills when Money is delivered ſimply here in *England*, and Bills received for the Repayment of the ſame in ſome other Country, either within the Realm or without the Realm, at a Price certain, and agreed upon between the Merchant and the Deliverer. For there is not at this Day any peculiar or proper Money to be found in *Specie*, whereupon outland Exchanges can be grounded; therefore all Foreign Coins are called imaginary.

At *London* all Exchanges are made upon the Pound Sterling of 20 *s.* and 12 *d.* to the Shilling; for *Germany*, *Low-Countries*, and other Places of Traffick; and for *France* upon the *French* Crown: For *Italy*, *Spain*, and ſome other Places, upon the Ducat: For *Florence*, *Venice*, and other Places in the *Streights*, commonly by the Dollar and Florin.

Note,

Note, in an Action on the Caſe upon a Bill of Exchange, it was ſaid in *Vernat* againſt *Debuſte*, Special Bail is not required in a Writ of Error by the Stat. of 3 *Jac.* 1. *cap.* 8. becauſe an Action upon the Caſe is not within that Stat. but only Actions of Debt; for had this been aided by 3 *Jac.* 1. there needed no proviſion by the Stat. of *Car.* 2. 2 *Keb.* 234. 2 *Bulſt.* 53, 54. 16, 17 *Car.* 2. *c.* 8. §. 3.

X. Bills drawn to be paid, are either at Sight, or a time certain, ſingle, double or treble Uſance, and are commonly about three, for fear of any Miſcarriage.

The taking and delivering Money at ſight binds the Taker up to give his Bill to pay at ſight, or within ſome ſhort time, the like ſum after ſuch a Rate the Pound, Dollar, Ducat or Crown, as is agreed between them in Foreign Coin, either according to the Valuation of Monies, or current Monies for Merchandize.

See what Action and how ſhall be brought for Guineas, Foreign Coin, in *Pope* and *S. Leger*'s Caſe, 1 *Lutwytch* 384. 1 *Leon.* 41. *Carth.* 322. *Wilſhalge* againſt *Davidge*. 3 *Cro.* 536. *Bagſhaw* againſt *Playn.* 2 *Cro.* 617. *Rands v. Peck. Latch*, 77, 84. *Ward*'s Caſe. *Guineas, Foreign Coins.* 4 *Mod.* 409.

XI. The ſecond time of Payment is called *Uſance*; it is known or taken to be the Compaſs of one Month, to be computed from the date of the Bill, and that governed according to the Cuſtom of the Place where thoſe Exchanges do run. For which Reaſon in an Action on a Bill of Exchange payable at *Uſance*, the Plaintiff muſt ſhew what the *Uſance* is. *Salk.* 135.

XII. The third is double or treble *Uſance*, two or three Months: Sometimes there are Exchanges made upon half *Uſance*.

The times of Payment do alter the Price of Exchanges according to time.

Uſance from *London* to *Middleborough*, *Amſterdam*, *Antwerp*, *Rotterdam*, *Liſle*, *Roan*, *Paris*: And all *France*, *Flanders*, and *Holland*, is generally accounted one Month's time from the Date of the Bill.

Uſance from *Amſterdam* to *Rome*, *Genoa*, *Venice*, *Naples*, *Palermo*, *Lucca*, *Seville*, *Liſbon*: And all *Italy*, *Spain*, and *Portugal*, is generally accounted two Months from the Date, &c.

Uſance from *London* to *Florence*, *Venice*, *Leghorn*, *Zant*, *Aleppo*, *Lucca*: is ſometimes accounted treble Uſance from the Date of the Bill.

The Bills may have a larger, ſometimes a ſhorter time, there is no direct certainty, but only that ſingle Uſance is a Month, double Uſance two Months, &c.

XIII. *Excambium vel Cambium*, or, as the Civilians term it, *Permutatio*; *Billa Excambii* ſignifies no more but a cuſtomary Bill, ſolemnized by numerous conſent of Traders, to have a Reſpect more than other Bills, though of as high and as intrinſical a Value: And thoſe that give ſuch Bills are called *Exchangers* or *Bankers*.

Reg. Orig. fol. 194. *Stat.* 5. *R.* 2. *cap.* 2.

Though the Act was no more but to keep up the Life of Commerce, (without which it is impoſſible for any Nation to flouriſh) yet could not any Perſon draw ſuch Bills, or return

turn Money beyond Seas, without Licence firſt obtained of the King. But at this day any Man may do it without being obliged to obtain ſuch leave.

Where there are two joint Traders, and one of them ſubſcribes a Bill for himſelf and Partner, it binds both. L. *Raym.* 175.

A Bill drawn upon *B.* requiring him to pay *C.* ſeven Pounds every Month, out of the growing Subſiſtence of the Drawer, was adjudged to be no Bill of Exchange. 10 *Mod.* 294. 316. *Forteſc.* Rep. 281. 2 L. *Raym.* 1362, 1481, 1482. *Stra.* 24, 219, 591, 592. 2 *Stra.* 762.

Note, There is not the ſame Strictneſs requiſite in penning of Bills current between Merchant and Merchant, as in Deeds, *&c.* 10 *Mod.* 287.

There are no preciſe Words neceſſary to be uſed in a Bill of Exchange, but that *deliver ſuch a Sum of Money*, makes a good one. 2 L. *Raym.* 1397. *Holt.* Ch. Juſt. ſeemed to think, that "I promiſe to pay the Bearer 20 *l.* on Demand was not a Bill of Exchange. 12 *Mod.* 380.

A Bill drawn on the Caſhier of a Company, for him to pay out of the Company's Caſh, is not a Bill of Exchange, 8 *Mod.* 265. *Stra.* 591. 2 L. *Raym.* 1361. See id. 1482. becauſe it was no more than a private Order to a Man's Servant. 2. *Stra.* 762. But one payable out of the Drawer's half yearly Pay by Advance is good. 2 L. *Raym.* 1481. 2 *Stra.* 762. *Barnard. R. B.* 12. but not one payable out of the fifth Payment when due. 2 L. *Raym.* 1563.

An Authority to receive Money to the Drawer's uſe, no Bill of Exchange. 4. *Vin. Abr.* 241. *pl.* 20.

The Bill muſt be for "*Value received*," 2 *Stra.* 1211. But according to *Show.* Rep. 5. *Forteſc.* Rep. 282. *Barnard. R. B.* 88. and 8 *Mod.* 267. there does not ſeem any occaſion for "*Value received*" to be in the Bill itſelf.

Salk. 130. 3. *Salk.* 67. There is no material Difference whether a Bill be drawn payable to *the Order of* A, *or Order:* For upon Acceptance, *A.* may maintain his Action in the one Caſe as well as the other. 10 *Mod.* 286.

XIV. Such a Bill being drawn, they commonly take one or two more of the ſame date word for word, only this Clauſe is inſerted in the ſecond, *My firſt of the ſame Date, Perſons and Sum not being paid:* And in the third, *My firſt and ſecond of the ſame Date, and contents not being paid.*

L. *Raymond* 816. The Declaration ought to aver, that the ſecond and third are not paid (& *vice verſa* come ſemble) but this may be aided by Verdict, though ill upon a Demurrer.

Conſuetudo quandocunque pro lege ſervatur, ſaith *Bracton, in partibus ubi fuerit more utentium approbata; longæ vi enim temporis uſus & conſuetudinis non eſt vilis authoritas, lib.* 1. *cap.* 3. The right Meaſure of judging on Bills of Exchange, is purely by the laudable Cuſtom often reiterated, by which means the ſame hath obtained the force of a Law, and not the bare and ſingle Opinion of ſome half-fledged Merchants: For Bills of Exchange are things of great Moment as to Commerce, and are neither to be ſtrained ſo high, as that a Man ſhould not caſt his eye on them, but the ſame ſhall be taken to be an *Acceptance:* Nor on the other hand, having duly accepted them, the ſame ſhould be raſhly and unadviſedly avoided, by the ſhallow fancy of ſuch nimble-pated Shufflers; but they are ſoberly judged

judged and governed, as the ſame hath generally been approved of, and adjudged of in former Ages.

XV. A Bill being remitted, the Party is to go immediately to the Perſon to whom the ſame is directed, and preſent the ſame in order to his Acceptance; if it be tendred, and the Party ſubſcribes *Accepted*; or *Accepted by me A. B.* or being in the *Exchange* ſays, *I accept the Bill, and will pay it according to the Contents*; this amounts without all Controverſy to an Acceptance.

But if the ſame be refuſed, the Party muſt then procure a *Proteſt*, and remit the ſame to the *Deliverer*, who is to reſort to the *Drawer* for Satisfaction for the Principal, Coſts, and Damage.

Words are made to ſignify things; by the word *Deliverer* is meant he that pays the Money beyond Sea. By the word *Drawer*, he that writes or draws the Bill of Exchange; the Perſon upon whom, is called the *Acceptor*.

The Drawing a Bill of Exchange is an actual Promiſe. L. *Raymond* 538.

Acceptance after the Day of Payment paſt is uſual, and good. L. *Raymond* 364. *Com.* Rep. 75. *pl.* 49. 12. *Mod.* 410. 212. L. *Raym.* 574. So Acceptance for the Honour of the Drawer. L. *Raym.* 575.

Three Days of Grace are allowed upon Foreign Bills, unleſs the third Day be *Sunday* or *Chriſtmas-Day*, &c. and then only two Days. L. *Raymond* 575, 473. No ſuch Cuſtom for inland Bills. *Idem* 743. Goldſmiths Notes to be received immediately. *Idem* 744, 2 Lo *Raym.* 757, 759, 774.

The Queſtion whether a general *Indebitat. Aſſumpſit* will lie upon a bare Acceptance of a Bill of Exchange, in the Argument of the Caſe of *Bellaſis* and *Heſter*. By Juſtice *John Powel*, a general *Indebitat. Aſſumpſit* does

Hard. 485, 486. *Salk.* 125.

not lie on a Bill of Exchange; but it ought to be a ſpecial Declaration upon the Cuſtom of Merchants, as in the Caſe of *Brown* and *London*. 1 *Levinz* 298. 1 *Mod.* 285. 2 *Keble* 695, 731, 758, 822. 1 *Vent.* 152. In which Caſe, Judgment was arreſted after Verdict, as reported by *Levinz* and *Ventris*.

In the Caſe of *Bromwich* and *Lades*, it was ſaid by the Chief Juſtice *Treby*, that Bills of Exchange were of ſuch general Uſe and Benefit, that upon an *Indebitat. Aſſumpſit*, a Bill of Exchange may be given in Evidence to maintain the Action; and by Mr. Juſtice *Powel*, that upon a general *Indebitat. Aſſumpſit*, for Monies received to the uſe of the Plaintiff, ſuch Bill may be left to the Jury to determine, whether this was for Value received or not. In this Caſe the Declaration was on the Cuſtom of Merchants, and a general *Indebitat. Aſſumpſit* thereon. See the Declaration and Exceptions to it, in the ſaid Caſe of *Bellaſis* and *Heſter*, in 1 *Lutwych*, 1589.

By the Stat. of the 9th and 10th of *Will. 3. cap.* 17. It is enacted that after the 24th of *June* 1698. All Bills of Exchange drawn in, or dated at, and from any place of this Kingdom, of the Sum of 5 *l.* or upwards upon any Perſon in *London*, or any other trading City, Town or Place (in which Bills, the value ſhall be expreſſed to be received) drawn payable at a certain time, after the Date thereof, may after Acceptance in Writing, and the expiration of three Days after the ſame ſhall be due, be proteſted by a Notary Publick, or in default of ſuch Notary Publick, by any other ſubſtantial Perſon of the Place before two Witneſſes; refuſal or neglect being firſt made of due Payment; which Proteſt ſhall be

be made under a Copy of the Bill, in the form preſcribed by the Act, and ſhall be notified within 14 Days after, to the Party from whom the Bills were received, who (upon producing ſuch Proteſt) is to repay the ſaid Bills with Intereſt and Charges from the Proteſting; for which Proteſt there ſhall not be paid above 6 *d.* And in Default of ſuch Proteſt, or due Notice thereof, the Perſon ſo failing ſhall be liable to all Coſts, Damages and Intereſt thereupon. Provided that if any ſuch Inland Bills be loſt, or miſcarry within the time limited for Payment of the ſame, the Drawer of the ſaid Bills ſhall give other Bills of the ſame Tenor, Security being given to indemnify him, in Caſe the ſaid Bills ſo loſt or miſcarried be found again. *Salk.* 128.

A Writ of Error was brought on a Judgment by *Nil dicit*, in an Action againſt the Drawer of an Inland Bill of Exchange; and it was objected, that ſince the Act of 9 *W.* 3. no Damages ſhall be recovered againſt the Drawer upon a Bill of Exchange without a Proteſt, and therefore the Action lies not, there being no Proteſt.

But *Holt* C. J. The Statute never intended to deſtroy the Action for want of a Proteſt, but only to deprive the Party of recovering Intereſt and Coſts upon an Inland Bill againſt the Drawer without Notice of Non-payment by proteſt; for before the Statute there was this Difference between Foreign and Inland Bills of Exchange: If a Bill was foreign, one could not reſort to the Drawer for Non-acceptance or Non-payment without a Proteſt, and reaſonable Notice thereof; but in Caſe of an Inland Bill, there was no occaſion for a Proteſt, but if any Prejudice happened to the

Drawer

Drawer by the Non-payment of the Drawee, and that for want of Notice of Non-payment, which he to whom the Bill is made ought to give, the Drawer was not liable; and the Word *Damages* in the Statute, was meant only of Damages that the Party is at, by being longer out of his Money by the Non-payment of the Drawee, than the Tenor of the Bill purported, and not of Damages for the original Debt: And the Proteſt was ordered for the Benefit of the Drawer; for if any Damages accrue to the Drawer for want of Proteſt, they ſhall be borne by him to whom the Bill is made; and if no Damages accrue to him, then there is no Harm done him, and a Proteſt is only to give formal Notice that the Bill is not accepted, or accepted and not paid; and if in ſuch Caſe the Damage amount to the Value of the Bill, there ſhall be no Recovery, but otherwiſe he ought not to loſe his Debt; but that ought either to appear by Evidence upon *Non Aſſumpſit*, or by ſpecial Pleading; and the Act is very obſcurely and doubtfully penned, and we ought not by Conſtruction upon ſuch an Act to take away a Man's Right. And the Judgment was affirmed *per totam Curiam.*

What Actions lie upon a Bill of Exchange, and how to be brought, and againſt whom. See *Hardreſs* 487. in *Scaccario*, and *Brown* and *London*'s Caſe, 1 *Mod.* 285. 1 *Levinz.* 298. and 2 *Keble* 695, 113, 158, 822. and the Caſe of *Cramlington* againſt *Evans* and *Percival*, 2 *Vent.* 307. L. *Raym.* 175, 364, 574. *Carth.* 5. *Skin.* 264. 1 *Show.* 4.

Acceptance of a Bill of Exchange may be pleaded as Payment in Bar of an Action of Account. 10 *Mod.* 37.

Where

Where the Drawee firſt accepts, and then ſuffers the Bill to be proteſted, he ſhall pay Intereſt from the Time of the Proteſt. 10 *Mod.* 37.

If a Bill be accepted and afterwards indorſed to the Drawer, he may maintain an Action as Indorſee, in caſe he had Effects enough in the Hands of the Drawee, to anſwer the Bill; but it is otherwiſe where the Acceptance was only for the Honour of the Drawer. 10 *Mod.* 37.

A. draws a Note upon a Goldſmith, and ſends his Servant to receive the Money, and inveſt it in Exchequer-Bills; the Servant gets *B.* to give him Money for the Note, and then brings the Exchequer-Bills to his Maſter, and two Days afterwards the Goldſmith fails; it was adjudged that *A.* muſt anſwer the Money to *B.* for the Property of the Note was not transferred to *B.* there being no Indorſement, and he could not have ſued upon it; it was only in the Nature of a Pledge or Security to him. 10 *Mod.* 109.

A Bill was drawn on the *York-Buildings Company*, one *Biſhop*, who was their Caſhier, accepts it without writing *for the Company*, or any Thing to that Effect: An Action was maintained againſt him in his private and ſingle Capacity upon this Acceptance. 3 *Bac. Abr.* 563. 2 *Str.* 955. 2 *Barnard, K. B.* 320. 2 *Kel.* 136. *pl.* 116.

XVI. If there be ſeveral *Drawers* who ſubſcribe, all are liable in caſe of a Proteſt.

If a Bill is drawn upon a Merchant in *London* payable to *J. S.* at double Uſance, *J. S.* is not bound in Strictneſs of Law to procure an Acceptance, but only tender the Bill when the Money is due: But Merchants, who generally have generous Spirits, will not ſurprize a Man, but firſt procure an Acceptance, or at leaſt leave the Bill for the Party to conſider

Nor is any ſuch thing as a three Days reſpite to be allowed for Acceptance.

ſider and give his Anſwer, and then give Advice of the ſame, and if the Money be not paid, then proteſt.

Note, the *Stat.* 3 & 4 *Ann. ch.* 9. having given like Remedy upon promiſſory Notes, as upon inland Bills of Exchange; it was reſolved, that an Action lies by a ſecond Indorſee upon a Note, whereby the Defendant promiſed to be accountable to *J. S.* or Order, for 100 *l.* Value received. L. *Raymond* 1396. 8 *Mod.* 362. *Stra.* 629.

A Note Value received *de premiſſis* in *Roſemary-lane*, was adjudged a good Note within the Statute. *Idem* 1545.

A Note payable ſo many Days after Marriage is not good. 2 *Stra.* 1151. but one payable two Months after a Ship is paid off, is. *Str.* 24. One to pay or deliver the Body of *J. S.* is not. *Gilb.* Cas. 932. L. *Raym.* 1362. 1396. 4 *Com.* Dig. 198. One to pay to *A.* for Value received, is, tho' without the Word "Order." *Sel.* Cas. Evid. 18. To pay if his Brother did not, is not. 8 *Mod.* 363. Nor to pay in three *Eaſt-India* Bonds, 4 *Com.* Dig. 198. but payable ſo many Days after the Death of the Drawer's Father, is. 2 *Stra.* 1217. But a Note in the Name of *two*, ſigned by *one* only, promiſing to pay on the Death of *G. H.* "provided he leaves either of us ſufficient to pay the ſaid Sum, or if we ſhall be otherwiſe able to pay it," is not. *Bur.* Rep. 325, 326. One given to an Infant, payable when of Age, is good. *Bur.* Rep. 227, 228. But not to deliver up Houſes, and a Wharf, and pay Money. 2 *Stra.* 1271. But one to pay for the Debt of another, is. *Str.* 264. So is one to pay at the Payment of the Ship *Devonſhire* for Value received. "I ac-

"I acknowledge, that Sir *A. C.* had delivered me all the Bonds and Notes, for which 400 *l.* were paid on Account of Colonel *S.* and that Sir *A.* delivered me Major *G*'s Receipt and Bill on me for 10 *l.* which 10 *l.* and 15 *l.* 5 *s.* Balance due to Sir *A.* I am ſtill indebted, and do promiſe to pay." Held to be a Note within the Statute. *Stra.* 756.

The Analogy between Promiſſory Notes and Bills of Exchange ſhould be attended to, in order the better to underſtand the Caſes; whilſt the Promiſſory Note continues in its original Shape, there is none; but when the Note is indorſed the Reſemblance begins; for then it is an Order to pay the Money to the Indorſee, and this is the very Definition of a Bill of Exchange; therefore the Indorſee, before he brings an Action againſt the Indorſer of a Promiſſory Note, ought to demand the Money of the Drawer; but it muſt be made on the Drawee, before an Action is brought againſt the Indorſer of a Bill of Exchange. 2 *Bur.* Rep. 676. 1224. 1227.

In an Action againſt the Indorſer of a Note of Hand, where the Note was due the fifth, and there was no Demand on the Drawer till the eighth, and no Notice to the Indorſer till the nineteenth: Mr. Juſtice *Denniſon* thought the Plaintiff had not made Uſe of due Diligence, either in demanding the Money, or in giving Notice to the Indorſer, and ſaid, there were no Days of Grace on a Note, as there are on a Bill of Exchange; but the Jury ſaid it was commonly underſtood, that there were three Days of Grace, and therefore thought the Demand was made in Time; but the Judge ſaid the Law was otherwiſe,

and

and directed them to find for the Defendant. *Trials at Niſi Prius.* Quarto 258.

In an Action againſt the Indorſer, Lord *Raymond* would not allow the Defendant to give in Evidence, that the Plaintiff deſired him to indorſe the Note to enable him to bring an Action againſt the Drawer, but declared he would not ſue the Defendant; but where the Action was brought by the Drawee againſt the Drawer, the Defendant was let in to ſhew it was delivered as an Eſcrow, *viz.* as a Reward in caſe he procured the Defendant to be reſtored to an Office, which it being proved he did not effect, there was a Verdict for the Defendant. *ibid.* 259.

And it ſeems a reaſonable Diſtinction, which has been taken between an Action and between the Parties themſelves, in which Caſe Evidence may be given to impeach the Promiſe, and an Action by or againſt a third Perſon, *viz.* an Indorſee or an Acceptor. *id. ibid.*

Where the Defendant borrowed Money of *J. S.* who lent it knowingly to game with, and aſſigned the Note for a valuable Conſideration to the Plaintiff, who had no Notice, yet it was holden void within 9 *Ann. c.* 14. *id. ibid.*

Not demanding the Money of the Drawer in a reaſonable Time, is giving Credit; but what ſhall be deemed a reaſonable Time muſt be left to the Jury upon the Circumſtances of the Caſe.

The Defendant having a Promiſſory Note payable to him or Order, two Months after Date, indorſed it to the Plaintiff, who ſent his Servant to the Drawer for the Money, who ſaid the Defendant had promiſed not to indorſe the Note over without acquainting him;

him; that he had not ſo done, and therefore he was not prepared to pay it; but promiſed Payment in three or four Days; and in the like manner put him off from Time to Time. After three weeks the Plaintiff wrote to the Defendant (not having ſooner learnt his Directions, though it was proved he ſooner inquired after it, and was told where he might learn it) that *Smith*'s Note was not paid; that he had often promiſed Payment, but had alledged, that the Defendant promiſed not to make uſe of it without acquainting him firſt: *Smith* became a Bankrupt; the Plaintiff writes a ſecond Letter; the Defendant anſwers, that when he comes to Town he will ſet that Matter to Rights; upon this Evidence the Jury gave a Verdict for the Plaintiff, notwithſtanding it appeared *Smith* continued ſolvent three Weeks, and paid above an hundred Pounds in the Time. *Trials at Niſi Prius.* 261. See *Salk.* 132. *pl.* 19. *Stra.* 508. 2 *Stra.* 1175.

As the Reaſonableneſs of the Time is a proper Conſideration for the Jury, the Court will not interpoſe by way of granting a new Trial, unleſs the Jury groſsly miſbehave; as if they ſhould find for the Plaintiff, where it appeared in Evidence, that he kept Banker's Bills from *April* to *Auguſt* before the Banker broke.

The Defendant had a Note of ſixty Pounds of one *Bellamy*, Goldſmith, payable to him or Bearer, at a Day then to come, about a Week before which he diſcounted at the Bank without indorſing the Bill; *Bellamy* about two Months after broke without having paid the Bill, upon which the Bank brought *Aſſumpſit* for Money lent, and upon this Evidence

dence obtained a Verdict; but the Court granted a new Trial, holding it to be a Verdict againſt Law; for if the Owner of a Bill, payable to Bearer, deliver it for ready Money paid down for the ſame, and not for Money antecedently due, or for Money lent on the ſame Bill, this is ſelling of the Bill like ſelling of Tallies, *&c.* But if there be an Indorſement thereon, the Indorſee may have Remedy on that Indorſement, provided he demand the Money in convenient Time. *Trials at Niſi Prius.* 261.

In a Writ of Inquiry before the Sheriff, on a Judgment by Default in an Action on a Promiſſory Note, the Plaintiff muſt prove his Note the ſame, as if the Defendant had pleaded *Non aſſumpſit*; though (1) in Debt on Bond and Judgment by Default it is otherwiſe.——Yet according to 2 *Str.* 1149. the Court of *K. B.* held, that on executing a Writ of Inquiry on Judgment by Default in *Aſſumpſit*, upon a Promiſſory Note, it was not neceſſary to produce the ſubſcribing (2) Witneſs, for the Note being ſet out in the Declaration, is (3) admitted, and the only Uſe of producing

(1) As there is no Writ of Inquiry in Debt, the Judgment in Default of a Plea being final, not interlocutory, the learned Judge's Obſervation ſeems erroneous.

(2) In an Action upon a Promiſſory Note, there being a ſubſcribing Witneſs, Chief Juſtice *Pratt* would not allow any other to prove the Hand, without ſhewing where the Witneſs was, and that he could not be produced; and this, on the general Rule, that the Law requires the beſt Evidence the Thing is capable of. *Sel.* Cas. Evid. 76.

(3) Inquiſition taken on a Writ of Inquiry of Damages ſet aſide, for want of the Plaintiff's proving a Promiſſory Note ſet forth in the Declaration, the Plaintiffs

producing it is, to ſee whether any Money is indorſed to be paid upon it; it muſt therefore be proved to be his Note, which may be by proving his Hand.

Though it be ſufficient for the Plaintiff in an Action on a Note of Hand to prove the Note to have been given by the Defendant, yet the Defendant will be at Liberty to ſhew it was given on an illegal Conſideration, and ſo avoid the Lien of it. *id.* 263.

The Indorſee declared, that the Defendant made his Note in writing, by which he promiſed to pay, *&c.* without ſaying that the Defendant ſigned it: This was held good, on Demurrer. 2 L. *Raym.* 1376, 1377.

So where the Declaration ſhewed that the Defendant made it for himſelf and his Partner, and ſigned it; whereby he promiſed for himſelf and his Partner to pay, *&c.* *Idem* 1484.

A Bill need not be expreſsly averred to be drawn according to the Cuſtom of Merchants. *Idem* 1542.

An Action on a Note by which the Defendant and another promiſed jointly *or* ſeverally, is ill. *Idem* 1544, 1545.

XVII. A Proteſt is no more but to ſubject the *Drawer* to anſwer in caſe of Non-acceptance, or Non-payment; nor does the ſame diſcharge the Party Acceptor, if once accepted; for the Deliverer hath now two Remedies, one againſt the *Drawer*, and the other againſt the *Acceptor*.

tiff's Attorney inſiſted, before the Sheriff and Jury, that the Note was admitted by the Defendant's ſuffering Judgment; and the Jury found the Sum mentioned in the Note for Damages, without any Proof, which was held unwarrantable. 2 *Barnes*'s Notes Com. Pleas. 192.

To entitle the Party to an Action at Law in *England* againſt the Acceptor, it matters not whether there be a Proteſt; but to entitle the Party to a Recovery againſt the Drawer beyond the Seas or elſewhere, there muſt be a Proteſt before a public Notary.

If a Merchant hath accepted a Bill, and before the ſame becomes to be due, he proves inſolvent, or at leaſt his Credit is publickly blaſted, a Proteſt ought to go.

If a Merchant, to whom the Bill is payable, be abſent, ſick or like to die, any Friend or Servant of his may cauſe a Proteſt to be made.

2 *Keb.* 584. *A.* draws a Bill upon *B.* to the Uſe of *C.* and upon Non-payment, *C.* proteſts the Bill; he cannot ſue *A.* unleſs he gives Notice that the Bill is proteſted, for *A.* may have Effects of *B.* in his Hands, by which he may ſatisfy himſelf, *Vent.* 45.

If the Drawee refuſes to accept the Bill, and it be of the Value of 20 *l.* or upwards, and expreſſed to be for Value received, the Payee or Indorſee may proteſt it for *Non-acceptance*; which Proteſt muſt be made in writing, under a Copy of ſuch Bill of Exchange, by ſome Notary Public; or, if no ſuch Notary be reſident in the Place, then by any other ſubſtantial Inhabitant, in the Preſence of two credible Witneſſes; Notice of ſuch Proteſt muſt, within fourteen Days after, be given to the Drawer.

But in caſe ſuch Bill be accepted by the Drawee, and after Acceptance he fails or refuſes to pay it within three Days after it becomes due (which three Days are called Days of Grace) the Payee or Indorſee is then to get it proteſted for *Non-payment*, in the ſame manner,

manner, and by the ſame Perſons, who are to proteſt it in caſe of Non-acceptance; and ſuch Proteſt muſt alſo be notified, within fourteen Days after to the Drawer; and he, on producing ſuch Proteſt, either of Non-acceptance or Non-payment, is bound to make good to the Payee or Indorſee, not only the Amount of the ſaid Bills, (which he is bound to do within a reaſonable Time after Non-payment, without any Proteſt, by the Rules of the Common Law) (1); but alſo Intereſt, and all Charges, to be computed from the Time of making ſuch Proteſt. But if no Proteſt be made or notified to the Drawer, and any Damage accrues by ſuch Neglect, it ſhall fall on the Holder of the Bill. 2 *Black.* Com. 468, 469.

If any Perſon accepts ſuch Inland Bill of Exchange in Satisfaction of a former Debt, the ſame ſhall be eſteemed a compleat Payment of ſuch Debt, if the Perſon accepting ſuch Bill for his Debt doth not take his due Courſe to obtain Payment thereof, by endeavouring to get the ſame accepted and paid, and make his Proteſt, by Stat. 3 *An. c.* 9.

Formerly the Declaration need not have ſhewn a Proteſt upon ſuch Bill, though the Drawer ought to have had convenient Notice of Non-payment. L. *Raymond* 992, 993. But the Law ſeems to be altered as to the Proteſt.

XVIII. A Bill drawn on two jointly muſt have a joint Acceptance, otherwiſe it muſt be proteſted; but to two or either of them, *è contra.*

Per Jaſonem in lege allegantur. ff. de conditionibus indebiti.

(1) 2 Lord *Raymond*, 993.

Then if the ſame be accepted by one, it is purſuant to the tenor of the Bill, and ought not to be proteſted but in caſe of Non-payment; and in that caſe the Perſon Acceptor is liable to an Action; but if it be on joint Traders, an Acceptance by one will conclude and bind the other.

Salk. 126. L. *Raymond* 175.

XIX. A Factor of the *Hamburg*, *Turkey*, or *India* Company draws a Bill on the ſame, and a Member accepts the ſame, this perhaps may make him liable, but not another Member.

So it is if ten Merchants ſhall employ a Factor at the *Canaries*, and the Factor draws a Bill on them all, and one of them accepts the Bill, and then refuſes Payment; this will not oblige the reſt.

But if there be three joint Traders for the common Stock and Benefit of all three, and their Factor draws a Bill on them, the Acceptance of the one will oblige the reſidue of the Company.

Winch. 24, 25. *Salk.* 126.

XX. A ſmall Matter amounts to an Acceptance, ſo that there be right underſtanding between both Parties: As *Leave your Bill with me, and I will accept it*; or, *Call for it to-morrow, and it ſhall be accepted*; that does oblige as effectually by the Cuſtom of Merchants, and according to Law, as if the Party had actually ſubſcribed or ſigned it (which is uſually done.)

But if a Man ſhall ſay, *Leave your Bill with me, I will look over my Accounts and Books between the Drawer and me, and call to-morrow, and accordingly the Bill ſhall be accepted*, this ſhall not amount to a compleat Acceptance: For this mention of his Book and Accounts was really intended to ſee if there were Effects

in

in his hands to anſwer, without which perhaps he would not accept of the ſame. And ſo it was ruled by the Lord Chief Juſtice *Hale* at *Guildhall*.

A Foreign Bill was drawn on the Defendant, and being returned for want of Acceptance, the Defendant ſaid, That *if the Bill came back again he would pay for it*; this was ruled a good Acceptance, 3 *Bac. Abr.* 610. 4 *Vin. Abr.* 250. *pl.* 11.

The Drawee wrote a Letter to him in whoſe Favour the Bill was drawn, That *if he would let him write to Ireland firſt he would pay him*, and this was held a good Acceptance. *Coram Raym.* C. J. at *Niſi Prius. Stra.* 648. L. *Raym.* 444. 3 *Bac. Abr.* 610. Law of Bills, 28.

If the Party underwrites a Bill of Exchange, *viz.* "*preſented ſuch a Day*," or only the Day of the Month, it is ſuch an Acknowledgment of the Bill, as amounts to an Acceptance, *Comb.* 401.

Acceptance of a Bill upon *two* by *one Partner binds both*, if it concerns the joint Trade; but otherwiſe, if it concerns the Acceptor only in a diſtinct Intereſt and Reſpect. *Salk.* 126. *pl.* 3. L. *Raym.* 175. 12 *Mod.* 345.

A Bill of Exchange may be *accepted* by *Parol.* 7 *Mod.* 87. *Salk.* 130. *pl.* 14. 12 *Mod.* 345. 2 *Stra.* 1000.

If a Merchant ſay, "leave the Bill with me, and I will look over my Accounts between the Drawer and me, and call to-morrow, and accordingly the Bill ſhall be accepted" this is no Acceptance, becauſe it depends upon the Balance of Accounts. Trials at *Niſi Prius*, 4to, 255.

An Acceptance may be qualified, as to pay half in Money, and half in Bills. 3 *Bac. Abr.* 611. *Comb.* 452. So to pay, when Goods ſent by the Drawer are ſold. 2 *Stra.* 1152.

There may be a partial Acceptance of a Bill of Exchange. *Stra.* 214.

Thereceiving of part of the Monies upon the Bill, does no ways weaken the Bills. *Trin.* 20. *Car.* 2. *in B. R.*

XXI. A Bill may be accepted for part, for that the Party upon whom the ſame was drawn had no more Effects in his hands; which being uſually done, there muſt be a Proteſt, if not for the whole Sum, yet at leaſt for the Reſidue: However, after Payment of ſuch part there muſt be a Proteſt for the Remainder.

Before the time of Payment of the Bill, the Party may notwithſtanding accept it, and pay it at the time of Payment; or another may accept the Bill for the Honour of the Drawer, and if he pay it in default of the Party, yet before Payment he is bound to make a Proteſt, with a Declaration that he hath paid the ſame for the Honour of the *Drawer*, whereby to receive his Money again.

Per leg. publi- in ſi ff. depoſi- ti & per Bart. ibidem, & per Romanum ſin- gulari, fol. 474.

XXII. Any time before the Money becomes due, the Drawer may countermand the payment, although the Bill hath been accepted.

The Countermand is uſually made before a Notary; but if it comes without, ſo it comes under the Party's hand, it is well enough.

If the Bill be accepted, and the Party deſires to have the Money before it be due, and it is paid, and then there comes a Countermand; it hath been conceived that it ought not to be allowed; for as he could not enlarge the Time, ſo he could not ſhorten it, but his Duty is to follow his Order.

XXIII. *Aſſumpſit*, and declares on the Cuſtom of *London*, that if any Merchant or other Perſon

Perſon merchandizing in *London*, make a Note in Writing under his Hand, and by this promiſeth to pay any Sum of Money to a Perſon in it named, or to the Bearer; and if the Perſon in the Note named, to whom by the Note it was promiſed to be paid, aſſign or deliver it to another Perſon for to receive the Money to his own uſe, and he carries this to the Drawer of the Note, and requeſts him to pay the Money to him, then the Perſon that made the Note was chargeable to pay this to the Bearer. That the Defendant (being a Goldſmith) made ſuch a Note, by it promiſing to pay a 100 *l.* to *W. B.* or the Bearer; and that *W. B.* delivered the Note to the Plaintiff to receive the Money to his own uſe, in ſatisfaction of 100 *l* due to him by the ſaid *W. B.* and that the Plaintiff carried it, and ſhewed it to the Defendant, and requeſted him to pay the 100 *l.* which he had not done; by which by the Cuſtom he became chargeable, and ſo promiſed to pay. After Verdict for the Plaintiff, it was moved in Arreſt of Judgment; that this Cuſtom to pay to the Bearer was too general: For perhaps the Goldſmith before notice by the Bearer had paid it to *W. B.* himſelf, as in truth he had; and of ſuch Opinion was the Court, *Horton verſ. Cogs*, 3 *Levinz*. 299. where ſee the Pleadings.

(*a*) If the Plaintiff recover againſt the Drawer of a Bill (though he has no Execution upon it) he ſhall not afterwards recover againſt any of the Endorſers. See the Caſe at large, *Glanton* and *Swift*, 3 *Mod.* 16. *Skinner* 255,

Drawer and Indorſer.

(*a*) This Judgment was reverſed in the Exchequer Chamber, becauſe the Recovery, without Execution, was no Satisfaction. *Intw.* 878, 882, *b.*

L. *Raymond* 180, 181. If a Goldſmith's Note be drawn payable to *J. S.* or Bearer, the Bearer cannot maintain an Action for the Money, except in the Name of *J. S.*

Note, The Drawer is bound to the Deliverer, and the Acceptor to the Party to whom the Bill is made payable; yet both are not bound to one Man, unleſs the Deliverer be a Servant to the Party to whom the Money is made payable; or the Party to whom the Money is made payable be Servant to the Deliverer: Yet both Taker and Acceptor are liable till the Bill is paid.

Styles 370. XXIV. Therefore when you bring your Action, be ſure to draw your Declaration accordingly, and make the ſame part of the Cuſtom as you ſet it forth; for if you vary, you muſt expect to be nonſuited: And the Party is not bound to alledge a particular Place of Demand.

See L. *Raymond* 281. That the Day of Acceptance ſhall be included in the Days allowed for Payment, unleſs there be a Cuſtom of Merchants to exclude it; and then that ought to be pleaded. *Q.* Whether ſuch Cuſtom. See alſo *Idem* 365.

Salk. 127. *pl.* 12. *Mod.* 244. *Skin.* 410. 2 *Stra.* 1087. To make an Indorſer liable to an Action, the Indorſee muſt in convenient Time demand the Money of the Perſon upon whom the Bill was drawn. *Ibid.* 443, 444.

Lord Chancellor *Hardwicke* ſaid, there had been a Difference of Opinion amongſt Judges, whether a Demand muſt be made upon the Drawer of a Bill of Exchange to intitle an Indorſee to an Action; but that he was very clear in his own Judgment, there was no Occaſion to make that Demand, for he conſidered every Indorſer as a new Drawer. *Atk.* Rep.

281

281. *pl.* 150. *Stra.* 441, 519. 2 *Bur.* Rep. 667.

If a Bill be returned protested for want of Payment, the Drawer is to repay the Money and Damage, or else he may procure a Security, which is no more but another Person of value subscribes the Bill, in these or the like words, *I here underwritten do bind myself as Principal according to the Custom of Merchants, for the Sum mentioned in the Bill of Exchange whereupon this Protest is made, dated,* &c.

Now the Drawer, by virtue of this supplemental Agreement, hath as much time again to pay Monies as there was given him in the Bill when it was first drawn; so that if the Money be not paid, together with the Rechange and Charges of the Party, the Party may recover the same on the Principal or Security.

XXV. Beyond the Seas the Protest * under the Notary's hand is sufficient to shew in Court, without producing the very Bill itself. But if a Bill in *England* be accepted, and a special Action grounded on the Custom be brought against the Acceptor, at the Trial the Party Plaintiff must produce the Bill accepted, and not the Protest; otherwise he will fail in his Action at that time.

* That is for not payment, the Bill being once accepted.

Therefore it is safe that a Bill once accepted be kept, and only a Protest for Non-payment be remitted; but a Bill protested for Non-acceptance must be remitted.

XXVI. If a Bill is left with a Merchant to accept, and he loses the Bill, (or at least it is so mislaid, that it cannot be found) the Party shall request the Merchant to give him a Note for the Payment according to the time limited in the Bill of Exchange; otherwise there must be two Protests, one for not Acceptance, the other

other for Non-payment: But if a Note is given for Payment, and there happens to be a failure, yet in that caſe there muſt be a Proteſt for Non-payment.

Salk. 128. XXVII. A Bill is remitted to *J. S.* who owes Monies to *J. D. J. S.* delivers the Bill to *J. D.* and on the Back-ſide ſubſcribes his Name; if *J. D.* receives the Monies, he may fill up the Blank, as if the Monies had been actually paid to *J. S.* This is practiſed amongſt Merchants, and by them reputed firm and good. But certainly the *Common-Law* looks upon this filling upon of Blanks, after a Man hath once ſigned or ſealed, to be no better than a harmleſs Forgery; but if there be either a general or ſpecial Authority to the purpoſe, it may then alter the Law.

By the Opinion of my Lord *Hale*, *Hill.* 28. *Car. B. R.* at *Guildhall.*

Note, No Perſon, be it Wife or Servant, can accept of a Bill of Exchange to bind the Maſter without a lawful Authority, as a Letter of Attorney, and the like, which muſt be under Hand, unleſs that it has been formerly and uſually done by the Wife or Servant in ſuch caſe, when the Maſter hath been out of Town, who hath approved of the ſame and anſwered Payment: It muſt be uſually done; but one Partner may for another.

Styles 370.

If an Indorſement be given in Blank, it may be filled up by the Indorſee, or by any one elſe, even in the Face of the Court, at the Trial. 2 *Bur.* Rep. 1218. 1225. *Com.* Rep. 312.

Where in the Declaration the Indorſement was ſet out to be for Value received, but being produced had it not: Lord Chief Juſtice *Eyre* allowed the indorſement to be filled up in Court, notwithſtanding the Caſe of *Clements* and *Jenkins*, P. 3 *Geo.* 2. was cited, where Lord

Lord *Raymond* refuſed to let it be done. *Trials at Niſi Prius*, 260.

A Servant of Sir *Robert Clayton*, and Mr. Alderman *Morris*, (but at that time actually gone from them) took up 200 Guineas of Mr. *Monck* a Goldſmith, without any Authority of his Maſter's; (but *Monck* did not know that he was gone) the Monies not being paid, *Monck* brought an Action againſt Sir *Robert Clayton* and *Morris*, and at *Guildhall* it was ruled *per Keeling* Chief Juſtice, That they ſhould anſwer, and there was a Verdict for the Plaintiff. And though there were great endeavours to obtain a new Trial, yet it was denied, the Court at *Weſtminſter* being fully ſatisfied that they ought to anſwer: For this Servant had uſed often to receive and pay Monies for them; and thereupon they actually paid the Monies.

Monck v. Clayton and *Morris, Mich.* 22 *Car.* 2. *in B. R.*

By *Holt* C. J. A Servant is ſent to receive Money for a Bill, he can't accept of a Note inſtead of Money, without the particular Direction of his Maſter. L. *Raym.* 930.

A Note given in Payment, is intended to be taken under this Condition, that it be paid in convenient Time. *Ibidem.* S. P. Q. If S. C. Eſq; *Abr.* 375, 376.

Note, That which will oblige the Maſter, will be the Authority and Liberty which he uſually gives the Servant; therefore ſuch a Power devolved, ought to be ſecured by the prudenteſt way that may be: Which is generally done by Bonds and Obligations.

And though the ſame ſeems an Act of Wiſdom for Merchants and others ſo to take, yet it oftentimes proves the Deſtruction of many a Family. The Father Puts out the Son perhaps with no leſs than 2 or 300 *l.* and is himſelf become bound for his Truth and juſt Accounting, *&c.* The Servant is immediately truſted with his Caſh, and then he, too young to be experienced in the World, either neglects keeping a juſt Account,

Account, or keeping that, ſubjects his Maſter's Caſh to be ſpent by himſelf and thoſe who make it their ſole Trade to betray ſuch Youths. The Maſter finding the Conſumption, calls his Servant to account, who, conſcious of the Act, forſakes his Service, dares not ſee his Relations, and then, as a general Conſequence, falls into Company, the which nothing but Providence can preſerve from taking other wicked Courſes. The Father is called to anſwer whatever the Servant hath ſpent or imbezzled; he muſt with a Heart full of Grief ſubmit to pay, beſides the Loſs of the Monies advanced upon the Servant's firſt putting forth; which ſometimes proves a great Affliction in a Family. On the other Side, if Servants were not to be intruſted, the Myſtery could not be learnt, nor the Buſineſs diſpatched; and therefore Faith muſt be given: But then it were Juſtice and Honeſty, that as a Father puts perhaps the Child of his Love to one in whom he repoſes a Faith and Truſt, that the Maſter ſhould be then as a Parent, ſo they ſhould prevent all Occaſions that might ſubject them to Temptations, and not be over haſty in truſting them with the Caſh. Which is the very Bait our *London* Gameſters catch ſuch Gudgeons with.

If a Bill of Exchange by contrary Wind or other Occaſions be ſo long on the Way, that the Uſance or Time limited by the Bill be expired, and being tendered, both Acceptance and Payment are denied; Proteſts for both muſt be made, and the Drawer muſt anſwer the Value, Rechange and Damage.

Raſtal, fol. 339.

XXVIII. A Bill once accepted, cannot be revoked by the Party that accepted it, though immediately after and before the Bill becomes due, he hath Advice the Drawer is broke.

Bald. in rubr. de conſtit. pecunia in ult. Col. & leg. quidem ff. eodem Col. penult.

If a Bill is not accepted to be paid at the exact Time, it muſt be proteſted; but if accepted for a longer Time, the Party to whom the Bill is made payable, muſt proteſt the ſame for want of Acceptance according to the Tenor; yet he may take the Acceptance offered notwithſtanding. Nor can the Party, if he once ſubſcribes the Bill for a longer Time, revoke the ſame, or blot out his Name, although it is not according to the Tenor of the Bill; for by his Acceptance he hath made himſelf

himſelf Debtor, and owns the Draught made by his Friend upon him, whoſe Right another Man cannot give away, and therefore cannot refuſe or diſcharge the Acceptance.

Note, This Caſe will admit of two Proteſts, perhaps three.

1. One Proteſt muſt be made for not accepting according to the Time. *Bald in leg. pro debit.*
2. For that the Money, being demanded according to the Time mentioned in the Bill, was not paid. *C. de bon actor. Jud. poſſiden & per Bartol. in leg. ſingul. Col. 7. ff. probatur.*
3. If the Money is not paid according to that Time that the Acceptor ſubſcribed or accepted.

A Bill was drawn payable the firſt of *January*, the Perſon upon whom the Bill was drawn accepts the Bill to be paid the firſt of *March*, the Servant brings back the Bill: The Maſter perceiving this enlarged Acceptance, ſtrikes out the firſt of *March*, and puts in the firſt of *January*, and then ſends the Bill to be paid, the Acceptor then refuſes: Whereupon the Perſon, to whom the Monies were to be paid, ſtrikes out the firſt of *January*, and puts in the firſt of *March* again: In an Action brought on this Bill, the Queſtion was, Whether theſe Alterations did not deſtroy the Bill? And ruled it did not. *Per* L. C. J. *Pemberton, inter Price & Shute, Paſch. 33 Car. 2. in B. R.*

XXIX. *A.* draws a Bill on *B.* and *B.* is in the Country; *C.* a Friend of his hearing of the Bill accepts it: The Party to whom the Money is to be paid, muſt make a Proteſt for Non-acceptance by *B.* and then he may take the Acceptance of *C.* and it ſhall bind *C.* to anſwer the Money.

If a Bill is drawn on *B.* and *B.* happens to be in the Country, and a Friend of his deſires the *Pinchard v. Fowke, Styles* 416.

the Party not to proteſt, and he will pay the ſame, it is good, and ſhall bind ſuch Party.

London. XXX. Merchants generally allow three Days after a Bill becomes due for the Payment; and for Non-payment within three Days Proteſt is made, but is not ſent away till the next Poſt after the Time of Payment is expired.

Holland. If *Saturday* is the third Day, no Proteſt is made till *Monday*.

There are two Proteſts: 1. For Non-acceptance, which is called Intimation. 2. For Non-payment.

XXXI. The Uſe of the Proteſt is this, That it ſignifies to the Drawer, that the Party upon whom he drew his Bill was unwilling, not to be found, or inſolvent, and to let him have a timely Notice of the ſame, and to enable the Party to recover againſt the Drawer; for if one draws a Bill from *France* upon a Perſon in *England*, who accepts and fails, or becomes inſolvent at the Time of Payment, if there be not a Proteſt and * timely Notice ſent to the Drawer there, it will be difficult to recover the Money.

* Which is looked upon to be the third Day.

In *Holland* they are not altogether ſo ſtrict, yet there muſt be a reaſonable Time of Notice; the Reaſon is, for perhaps if he had reaſonable and timely Notice, the Drawer then might have had Effects, or other Means of his upon whom he drew, to reimburſe himſelf the Bill, which ſince, for want of timely Notice, he hath remitted or loſt. And the general Rule is, that though the Drawer is bound to the Deliverer till the Bill is ſatisfied, yet it is with this Proviſo, that Proteſt be made in due Time, and a lawful and an ingenious Diligence uſed for obtaining Payment of the Monies; for it were unreaſonable the Drawer ſhould ſuffer through his Neglect.

There is no Danger, be the Party never ſo reſponſible, to proteſt immedi-

XXXII. Where

ately if the Money be not paid when it is due, *i. e.* the third Day; but there may, (eſpecially beyond Seas) be great Hazard for want of proteſting.

XXXII. Where a Merchant hath accepted, and before the ſame became due, he becomes inſolvent, or at leaſt his Credit publickly blaſted, a Proteſt ought to go; but then there is uſually a Demand made, which once coming, the Drawer is compellable to give better Security; and if a ſecond Bill comes, if no Proteſt, then Drawer and Security lie at Stake. *In leg. pro. debito in fine C. de bon. author Judi poſſiden.*

If a Bill of Exchange be paid before it is due unto one that breaketh afterwards, he ſhall be compelled to pay it again unto the Deliverer of the Money, within what Time it is payable.

XXXIII. If a Merchant draws a Bill, and there is a Proteſt for Non-payment; if another Perſon hearing of the ſame, declare, that he for the Honour of the Drawer will pay the Contents, and thereupon ſubſcribes, he is obliged thereby; and in this Caſe it has been practiſed, that that Party that received the Money hath put his Name on the Backſide of the Bill in Blank; but the Receipt is ſometimes taken on the Proteſt, which together with the whole Proceeding is turned into an Act, and the ſame being drawn by the Notary, is remitted to the Drawer by him who gave Honour to the Bill. *Brunettio's* Caſe. *Carth.* 129. 1 *Lutw.* 896. *S. C.*

XXXIV. If a Bill be accepted, and the Party dies, yet there muſt be a Demand made of his Executors or Adminiſtrators; and in Default or Delay of Payment, a Proteſt muſt be made: And although it may fall out, that the Monies may become due before there can be Adminiſtrators, or the Probate of the Will be Fourteen Days allowed from the Death before Adminiſtration can be committed, unleſs there be a Will.

be granted; yet that is Delay ſufficient for a Proteſt in caſe of Non-payment.

But an Intimation ought to go, and that the Acceptor is willing to pay according to Order.

But on the other hand, if the Party be dead to whom the Monies are made payable, and the Monies are ready to be paid, and there is no Perſon that can legally give a Diſcharge, yet a Proteſt ought not to go for Non-payment: The Reaſon is, becauſe there is no Perſon that hath any Authority either in Deed or in Law to make it, and a Notary ought not to make it; if he does, and the Party hath received any Prejudice thereby, an Action of the Caſe perhaps may lie againſt him for his Pains: Nor does it avail, that if Security be offered to ſave him harmleſs againſt the Executors or Adminiſtrators, for that is an Act left to his own Diſcretion; for perhaps the Security may not be liked: But whether good or bad, makes nothing as to oblige him in Law.

But if a Man is bound in a Bond to pay a Sum of Money to *J. S.* his Executors, Adminiſtrators, *&c.* and the Obligee dies inteſtate the Day before the Sum becomes due, yet the Bond is not forfeited if not paid at the Day, becauſe there was nobody to whom the Obligor could pay to ſave his Obligation: But as *Littleton* ſays, *If it be to pay to* J. S. *generally, you muſt hunt him out all over the Kingdom, if you'll ſave the Penalty.*

XXXV. A Man not found, or being found, not met withal either at Home or the *Exchange*, is Cauſe ſufficient for a Proteſt; but in that there muſt be Diligence uſed in the finding him.

A Bill returned proteſted for Non-payment being once ſatisfied by the Drawer to the Deliverer, the Drawer is diſcharged, and ſo

is

is the Acceptor to him to whom the Monies were to be paid: But the Acceptor by virtue of his Acceptance makes him Debtor *according to the Cuſtom of Merchants* to the Drawer.

A. drew a Bill of Exchange in the *Weſt-Indies*, on *T.* in *London*, at ſixty Days Sight to *W.* or Order, *W.* indorſed it to *G.* who preſented the Bill to *T.* who refuſing, *G.* noted it for Non-acceptance, and at the End of ſixty Days proteſted it for Non-payment, and then wrote a Letter to *A.* and alſo to his Agent in the *Weſt-Indies*, acquainting him that the Bill was not accepted. In an Action brought againſt *A.* by *G.* in this Caſe, he was nonſuited, for by not ſending the Proteſt for Non-acceptance, he made himſelf liable. The uſe of Noting is, that it ſhould be done the very Day of Refuſal, and the Proteſt may be drawn any Day after, by the Notary, and be dated of the Day the Noting was made, and the ſixty Days would then begin to run, as to the Bill-holder, from the Date of the Noting; and where the Bill is accepted, the ſixty Days begin to run from the Acceptance. *Trials at Niſi Prius.* 256.

Sir *John Bland* gave a Bill of Exchange to *Robinſon*, for 672 *l. viz.* 300 *l.* lent at the Time and Place of Play, and 372 *l.* loſt. The Play was very fair, and there was not any Imputation on *Robinſon*'s Behaviour. He brought an Action of *Aſſumpſit* againſt Sir *John*'s Repreſentative on the Bill of Exchange, and alſo for Money lent. Upon a Caſe reſerved, the Court held that he could not recover on the firſt Count, the Bill of Exchange being void by 9 *Ann. c.* 14. But they held as to the ſecond Count, though no Action could be maintained for Money won at

Gaming, the Statute prohibiting any Recovery upon a gaming Conſideration; yet as to the Money lent, the Statute only avoids the Security, and not the Contract, which when fair is good, and therefore gave Judgment for the Plaintiff for 300 *l.*—In the ſame Caſe it was made a Queſtion, whether the Plaintiff ſhould recover any, and what Intereſt? As to the firſt the Court ſaid, that though the Security were void, yet he had agreed to pay Intereſt. As to the ſecond, though the Practice had been to ſtop Intereſt at the bringing of the Action, yet they held the Plaintiff intitled to Intereſt to the Time of the Judgment, and ſaid the Court ought always to give Intereſt to the Verdict at leaſt. *id.* 259. 2 *Bur.* Rep. 1077.

XXXVI. Monies may be had on Exchange by way of Letters of Credit, the which are in two Reſpects; the firſt general, the other ſpecial.

The general Letter is open, directed, *To all Merchants and others that ſhall furniſh my Servant or Factor, or any other with ſuch and ſuch Monies*; for Re-payment of which he binds himſelf to anſwer and pay all ſuch Bills of Exchange as ſhall be drawn on him upon the Receipt of the Value, by his Servant, Factor, or other Perſon: If there be really Monies advanced on this Letter of Credit, and paid to the Factor, Servant, or other, and Bills of Exchange are ſent to the Party that ſent ſuch Letter of Credit, and if he refuſes to accept, yet according to the Cuſtom of Merchants he is bound to pay: The Reaſon is, for that there was no Reſpect had to the Ability of the Taker-up, but to him that gave his Letters of Credit: And therefore in ſuch

Caſe,

Caſe, if an Action at Law be brought, the particular Cuſtoms as to that Point muſt be carefully ſet forth.

The ſpecial Letters of Credit, where one writes a Letter to furniſh another Man's Factor or Agent; there is in this the ſame Remedy as above.

As Bills of Exchange ſeldom come without Letters of Advice, ſo ought they to be purſued: If a Bill ſhall expreſs, *And put it to the Account of* A; and the Letter of Advice ſays *B.* this muſt be proteſted againſt, for it cannot ſafely be paid, at leaſt running the Riſque of an equitable Suit.

XXXVII. If one pays Money on a Bill before it be due, and the Party breaks, it has been conceived that the Party ought to anſwer the Drawer: The Reaſon hath been, becauſe the Drawer might have countermanded the ſame, or ordered the Bill to be made payable to another.

In *Italy*, if Money is paid to a Banker's Servant, and if the Maſter ſubſcribe, *Pagate com ſi dice*, this binds the Maſter as effectually, as if he had ſubſcribed it with his own Hands.

XXXVIII. A Bill drawn by a Merchant in *London* payable by another Perſon beyond Seas, ſuch Bills in moſt Countries are aſſignable over from Merchant to Merchant, and the laſt Perſon may ſue and recover the ſame upon an Acceptance: But in *England*, only the firſt Perſon mentioned in the Bill, and to whom the Money is made payable, may recover. 'Tis true, ſuch Perſon to whom the Money is made payable, may for valuable Conſideration deliver this Bill to another Perſon, and he may indorſe an Order on the Back-ſide;

and if the Party afterwards refuſes Payment of the ſame, it may be ſued in the Party's Name to whom the ſame was transferred, laying the ſame by way of Cuſtom.

But if the Perſon to whom payable, indorſes it for Payment of Part to *J. S.* the Drawer is not liable to the Action of *J. S.* for a Man cannot make another liable to two Actions, where by the Contract he is liable but to one. L. *Raymond* 360, 744.

Where the Bearer receives Value for a Bill not indorſed, it is a Sale of the Bill. *Idem* 442. But if there be an Indorſement, tho' only upon Diſcount, the Indorſer is liable. *Idem* 443, 444. And a blank Indorſement may be filled up by the Indorſee. *Ibid.* In an Action againſt the Indorſer, not neceſſary to prove the Hand of the Drawer. *Ibid.*

It is eſſential to a Bill of Exchange to be negotiable. 10 *Mod.* 294.

In an Action againſt the Indorſer, the Plaintiff need not prove the Drawer's Hand, for if it be a forged Bill, yet the Indorſer is liable. *Trials at Niſi Prius.* 258.

It is enacted by 3, 4 *An. c.* 9. That all Notes payable to any Perſon or Order, ſhall be aſſignable over in the ſame manner as Inland Bills of Exchange are or may be, and that any Perſon, to whom ſuch Note is indorſed, may maintain an Action for the Money, either againſt the Perſon who ſigned ſuch Note, or againſt any of the Perſons who indorſed the ſame, in like manner as in Caſes of Inland Bills of Exchange.

By *Stat.* 2. *Geo.* 2. *ch.* 25, *Sect.* 1. If any Perſon ſhall forge, or procure to be forged, or aſſiſt in forging any (*inter alia*) Bill of Exchange, Promiſſory Note for Payment of Money,

Money, Indorſement, or Aſſignment of any Bill of Exchange, or Promiſſory Note for Payment of Money, or any Acquittance or Receipt for Money or Goods; or ſhall utter or publiſh as true any ſuch forged, *&c.* knowing the ſame to be forged, with an Intent to defraud any Perſon; every ſuch Offender ſhall be guilty of Felony without Benefit of Clergy. And,

By *Stat.* 7. *Geo.* 2. *ch.* 22. If any Perſon ſhall falſely make, alter, or forge, or procure to be falſely made, *&c.* or aſſiſt in falſely making, *&c.* any Acceptance of any Bill of Exchange, or the Number or principal Sum of any accountable Receipt for any Note, Bill, *&c.* or any Warrant or Order for Payment of Money or Delivery of Goods, or ſhall utter or publiſh any ſuch falſe Acceptance, Bill, *&c.* with Intent to defraud any Perſon; every ſuch Offender ſhall ſuffer as a Felon without Benefit of Clergy.

XXXIX. In an Action on the Caſe, grounded upon the Cuſtom of Merchants, that whenever any ſuch or other Perſon, negotiating for them with any other Merchant in *England*, have Bills directed to them, that if He, to whom ſuch Bills are directed, refuſe to accept on Sight, or to pay ſuch Bills, then he that drew it ought: Both being by the Cuſtom to be Merchants, the Bearer as well as the Drawer. And the Plaintiff not having ſhewed that the Bearer was ſuch a Merchant or Perſon negotiating, it was moved to ſtay Judgment for that Cauſe; but Judgment was given for the Plaintiff, for by the Court ſuch Merchant is referred only to him, to whom the Bill is directed, and to the Procurers of ſuch

1 *Keb.* 592, 636.

ſuch a Bill, and not to the Drawers, or they to whoſe Uſe the Money is to be paid.

See where an Averment is neceſſary of the Defendant's being a Merchant on ſuch Action upon the Cuſtom of Merchants, *Cro. James* 306. *Oaſte verſ. Taylor*, and *Cro. Charles* 301. *Barnaby verſ. Rigolt.*

Salk. 125. In an Action on the Caſe, on an Inland Bill of Exchange brought by the Indorſer againſt the Drawer, it was objected, that there was no Averment of the Defendant's being a Merchant; but it was anſwered and reſolved by the Court, that the drawing of the Bill was a ſufficient merchandizing and negotiating to this Purpoſe.

CHAP. XI.

Of Monies advanced by way of Bottomry, or *Fœnus Nauticum.*

I. *How* Commerce *is made equivalent to natural Community.*

II. *Whether Money be fit only to maintain the Trade and Credit of Vice.*

III. Abraham *choſe to acquire a Property by Money.*

IV. *Of the natural and inſtrumental Meaſure of the Value of Things.*

V. *How Money is equal to all Things.*

VI. *Money is for buying, and hinders not, but helps Permutation.*

VII. Money *the Inſtrument of Charity and Sacrifices, as well as our Neceſſities.*

VIII. *Of the Difference between Monies advanced to be uſed in Commerce at Land, and that which is advanced at Sea.*

IX. *Of Monies advanced by way of* Bottomry, *when the Contract hath its Inception.*

X. *Of Monies ſent on Ship-board, and the Veſſel is wrecked,*

wrecked, where the Lender ſhall bear Share of the Loſs, and where not.

XI. *Of Monies taken up by the Maſter, where the ſame ſhall oblige the Owners, and where not.*

XII. *The Derivation and Inſtitution of this ſort of Loan, and for what Cauſes.*

XIII. *Of the ſeveral Ways of taking up of Monies by way of* Bottomry, *real and feigned.*

XIV. *Monies ſo advanced, whether Gain ought to be bounded, or otherwiſe left to the Will of the Lender.*

XV. *Of* Uſura Marina, *how reaſonable the ſame ſtands at this Day.*

XVI. *Of Monies advanced to a conſiderable Profit, called* Uſufruit.

I. MONEY is one of thoſe Things, which they who want, want all other Things but Words to reproach their bad Fortune. But ſometimes it is the Policy, even of Rags and Poverty itſelf, to undervalue that which it cannot have, and to convert that which it hath (though never ſo mean into an Eſteem; and then to lodge as much Pride in a Tub, as *Alexander* could in a Palace, tho' it could not tempt him to a Change of Condition.

Nil habet infælix paupertas durius in ſe,
Quàm quod ridiculos homines facit——

No Wonder therefore, ſeeing rich Men will be obſtinate to hold their Advantages, that deformed Poverty, (which mixes with them in the ſame Frame, as a Shadow to ſet off their Colours the better) would have the Rich to deſcend to them; and that inſtead of ſetting out Monies by way of *Bottomry, Uſury*, and the like, they would not have any ſuch Thing as Money at all, but would have all Things reduced into a State as is before mentioned *.

* *Lib.* 1. *cap.* 1. §. 1, 2, 3.

It cannot be denied, but that we all live by the natural or intrinſick Value of Things; but the way to come by them is an Inſtrument of Civil Value, which is Money; inſtead of Community, therefore, we now have Commerce: Which *Commercium* is nothing elſe but *Communio Mercium*; but Communion muſt needs be by the Means of another Thing that may bear equal Proportion on both Sides, which is Money only. But now let us hear, and, if poſſible, ſatisfy the Complaints that are made againſt it ſo impatiently.

Where there is great Luxury, there muſt be likewiſe great Induſtry to maintain it; and therefore the Induſtry of this Civil State muſt be greater than that which is in the ſimple State of Nature: But what is there here to blame, ſeeing Induſtry, no more than Plenty, is, in itſelf, a Sin?

Aſcham de Nat. Monet. cap. 6.

II. It is the Anſwer of Envy or Ignorance, *Prima peregrinos obſcœna pecunia mores Intulit.* Money is that (ſay they) which maintains the Trade and Credit of Vice, if that were taken away, we ſhould look after nothing but Neceſſaries which are virtuous; it makes too nice Inequalities and Diſtances, and is not ſignificant enough in the beſt Things: For all the Money in the World is not really worth one Penny-Loaf, which is convertible into our Natures and Subſtances; it ſerves only to aſſure Fortune, but not Virtue; it is accepted as the Meaſure of all Things Natural, Moral, and Divine: For Honour is nothing but antient Riches †, and in Morals, *Virtus poſt nummos*; this, in Religion, breeds that Root of all Evil, Covetouſneſs: For, in a ſimple State of Nature, neceſſary Things muſt needs be ſpent within a ſhort Time, and the

† *Ariſt. Polit.*

the Return of the Sun brings a new Supply, and a Treaſure greater than the *Indies*; of which One ‖ makes this Obſervation, *That it was got in Blood, ſails home in a Sea of Blood, and never reſts till it be laid out in Blood.* This was that which was made the Price of *Salvation*, even of the Blood of our *Bleſſed Saviour*, thirty Pieces for that which was worth thirty thouſand Worlds; but in the Religion of the firſt Times, *Nullo violatus Jupiter auro*, as *Juvenal* hath it.

‖ *Campanella Monarch. Hiſp.*

And if this had not been brought into the World, we ſhould not have ſo much to diſcount for at the Day of Judgment. Why therefore ſhould that which is condemned to the Obſcurity of the Earth, and lodged ſo near Hell, now be made the Price of all that which is above the Earth, even *à Solo uſque ad Cœlum?* Or why ſhould we be excluded from the Gifts of Nature, unleſs we have thoſe of Fortune? Is it not then more reaſonable, that rich Men loſe this Inſtrument of Luxury, than the Poor ſhould loſe the neceſſary Means of their Subſiſtence? This is the Plea which is made *in forma Pauperis, & de ipſa Paupertate.*

Moſt certain it is, that neither the ſtupid Simplicity of the Woods, nor Poverty itſelf, are any Part of Virtue; and therefore are not reckoned Bleſſings, as Riches were to *Solomon*, (he who built God's firſt Temple, and put his Religion in Luſtre) and as they likewiſe were to *Numa*, from whom Money was called *Nummus*; he likewiſe built the firſt Temple at *Rome*, and kindled firſt the Veſtal Fire, *& ferocem populum deorum metu mitigavit.*

III. We know how God converſed with *Abraham*, who was the firſt that had Money, and

and made use of it to buy a Property: It is true, they with whom he inhabited called him a Prince; but that was no Argument to him to disown their Properties, but for the contrary, lest they should think that Dominion or a Right to Things was founded in Grace.

IV. But to come more close to the Question, and to examine the Reason and Necessity of this Measure; Money is like a Law or Government, which are all constituted by the same extreme Necessity; therefore the counterfeiting or attempting to destroy any of these by private means, is every where Treason. Now this Measure is two-fold, either Natural or Civil, or rather Natural, and the Instrument which expresses the Natural by equal Permutation: The Natural Measure is proportioned either by *Want*, or *Plenty*. In *Want* we consider whether the thing be useful or necessary; Things which are necessary are best, but of least Price; as a Loaf of Bread is more necessary, but infinitely cheaper than a Diamond. One Man hath Clothes, another Leather; those two possibly have no need of one another, and therefore there will be no Permutation betwixt them; but if one had need of another, then he who were more pressed, would come to the Price of the other: And therefore *Want* or *Plenty* is the Measure of estimating Things, and is the Bond of Society, whereby one Man shews he is or may be useful to another; and Nature hath so ordered it, that no Man is so rich who hath not some need of the Poor; and no Man is so mean and abject, but he may be some ways useful to the Rich.

Money is like the Middle Term of a Syl-

V. The Civil Measure, or rather Instrument whereby the Natural expresses itself, is *Money*,

Money, which hath but a feigned Value, and therefore it is ſometimes higher and lower in eſteem as Men pleaſe; which could not be, if its Value were natural, which is unalterable. If I have Cloth at ſuch a Price, and you have Wines at the ſame Price, then we regarding the ſame Price, may make an equal Permutation: Or if I give to you ſo many Pieces of Gold for your Cloth at the ſame Price, the Sale is equal again. Whether it be an Inconvenience, that in ſome Countries * it is ſometimes at higher Value than at another, is not a Conſideration of this Diſcourſe; for the Price of things themſelves change more than any Money doth daily.

logiſm, of which it is ſaid, *Quæ conveniunt in Tertio conveniunt inter ſe.*

* *Poland*, and generally in moſt of thoſe Northern Countries.

VI. *Money* is an Invention only for the more expedite Permutation of things; but it doth not follow, that Men may not make any Permutations but by Money, even as well now as if we were in our natural State. If they who dig now in waſte Hills have their Harveſt of Beans well gathered in, but had need of Wine for the Stomack's ſake, or of Drugs for Health's ſake; if the Vintner, or Apothecary have no need of Beans, what uſe will they make of the natural Value of their Beans without Money? Or if need be, what would they do till their Beans are gathered? Money therefore hinders not Permutation and Commerce of natural things, but aſſiſts them; nay, it is therefore an Inſtrument of Inſtruments; for he who hath Money may buy things which he need not uſe, but ſell, thereby to get other things afterwards for his Uſe. There is no Nation or People ſo barbarous, but have Money, or a publick Inſtrument of Permutation either in Metals or in Fiſh Bones, *&c.* for it imports not much of what matter

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it is, provided it be durable, not counterfeitable, and difficult to come by.

VII. Take away this fungible Inſtrument from the Service of our Neceſſities, and how ſhall we exerciſe our Charity, which is a Branch of Religion and Juſtice, as well as of Humanity? He who goes to Church, paſſeth, as it were, through two Temples, the Poor at the Porch, and the Temple itſelf: And the giving at the Porch is called *Sacrifice*, *Offering*, and *Gift*, as well as that at the Altar. God would be ſacrificed to only in one Town of the World, *Jeruſalem:* But could that have been, if *Money* and *Money-Changers* had not been allowed? How could they, who came from ſuch remote Places, have, by any other means, brought their Oxen, Calves, Goats and Doves to the Altar? If there were nothing further to ſhew but that one Piece, which our Saviour himſelf coined miraculouſly in the Mouth of a Fiſh, it were Argument ſufficient, that the Uſe of *Money* may be both good, juſt, and neceſſary.

Vide Chap. of Exchange, §. 1.

VIII. Things being thus ſtated, and that *Money* is both good, juſt, and neceſſary, it will be demanded loudly, That admitting a reaſonable Advantage may be made by way of Uſury, *quo jure* is it, that an Advantage upon the ſame, more than what the Law allows, is taken?

The Diſtinction is great between Monies lent to be uſed in Commerce at Land, and that which is advanced to Sea. In the firſt, the Laws of the Realm have ſet Marks to govern the ſame, whereby the avaricious Mind is limited to a reaſonable Profit: The Reaſon of that is, becauſe the Lender runs none, but the Borrower all the Hazard, whatever

Leg. 3. *D. de Naut. fœn. lib.* 1. *eod. l.* 62. *D. de rei. Vindic. Locinius, lib.* 2. *cap.* 4. §. 2.

that

that *Money* brings forth. But *Money* lent to Sea, or that which is called *Pecunia trajectitia*, there the ſame is advanced on the Hazard of the Lender, to carry (as is ſuppoſed) over Sea; ſo that if the Ship periſhes, or a Spoliation of all happens, the Lender ſhares in the Loſs, without any Hopes of ever receiving his *Monies*; and therefore is called ſometimes *Uſura Marina*, as well as *Fœnus Nauticum*, the Advantage accruing to the Owners from their Money, ariſing not from the Loan, but from the Hazard which the Lender runs; the which is commonly reduced to a time certain, or one or more Voyages, according to their ſeveral and reſpective Agreements.

* *Leg. Fœn. Naut. Leg. periculi eod. Lex Mercat.* 122.

IX. If the Bonds be ſealed, and the *Money* is advanced, if the Ship happens to miſcarry by Storm, Fire, Enemy, or any otherwiſe before the Voyage began, then the Borrower runs the Riſque, unleſs it be otherwiſe provided generally, as that if ſuch a Ship ſhall not arrive at ſuch a Place at ſuch a time, *&c.* there the Contract hath its Inception from the Sealing; but if the Condition be, That if ſuch a Ship ſhall ſail from *London* to *Amſterdam*, and ſhall not arrive there, *&c.* then, *&c.* there the Contingency begins not till the Departure. Yet it has been conceived, that if the Maſter takes up Money accordingly, and buys in a lawful Lading, but will endeavour to defraud the Prince or State of their Cuſtoms, and put ſuch Goods on Board, by means whereof he has incurred a Forfeiture of his Ship; in ſuch Caſe the Lender is not obliged to ſuch Hazard.

Vide paſſim aa leg. de Fœn. Naut. & DD. leg. Naval. Rhod.

Vide leg. 3. *C. de Fœn. Naut.*

X. If *Money* be lent on Ship-board by a Merchant, *ſuper Cargo* or Paſſenger, and before

fore the Day of Payment the Ship happens to be wreckt or caſt away; if there be ſuch a Saver as will admit a Contribution, then the Party is not to have his whole *Money*, but is to come into the Average: But if the Time of Payment were paſt before the Misfortune happened, then the Lender muſt be repaid his whole Money free from Contribution.

Leg. Naval. Artic. 17.

And therefore by the Laws Marine, if the Borrower detains any ſuch lent Monies beyond the Term appointed for the repaying, he ſhall at his Return not only pay the Profit agreed on before the Voyage, but alſo augment the ſame according to the Time that hath accrued ſince the Day of Payment.

Artic. 18.

Where the Bond will be forfeited by Deviation. *See* 2 *Cha. Ca.* 130. 2 *Salk.* 444.

Where the Ship never went out of the River, the Lender was obliged to take his Principal and Intereſt, becauſe he ran no Hazard. 1 *Vern.* 263.

Courts of Equity will not aſſiſt Bottomry-Bonds, which carry an unreaſonable Intereſt. *Dandy* and *Turner*, Equ. *Abr.* 372.

XI. A Maſter of a Ship hath no Power to take up *Money* by *Bottomry*, in Places where his Owner or Owners dwell, unleſs it were for ſo much only as his Part comes to in the ſaid Ship: Otherwiſe he * and his Eſtate muſt ſtand liable to anſwer the ſame. (*a*) But when a Maſter is out of the Country, and where he hath no Owners, nor any Goods of theirs, nor of his own, and cannot find means to take up by Exchange or otherwiſe, and that for want of *Money* the Voyage might be retarded or overthrown, *Monies* may be taken up upon *Bottomry*, and all the Owners are liable thereunto; otherwiſe he ſhall bear the Loſs

* *Teſtatur Vinius in Peckium ad L. L. Nautic. quem vide pag.* 95. *Leg. Oleron. c.* 1. *Leg.* 4. *de Naut fœn. l.* 1. *c. eod. Leg. qui Romæ* § *Calimachus de verb.*

the Loſs, that is, the Owners are liable by their Veſſel, though the *Money* is not ſo employed in Truth; and the Owners have their Remedy againſt him whom they put in Truſt. (*b*) But the Perſons of the Owners are no ways made liable by the Act of the Maſter for *Monies* taken up.

If Owners agree not in ſetting out the Ship moſt Voices ſhall carry it, and then *Money* may be taken up for their Part by *Bottomry*, or *Fœnus Nauticum*, or by *Hypothecating* ſuch a Proportion of the Ship.

Many Maſters of Ships having enſured or taken up *Monies* upon *Bottomry*, to greater Sums of Money than the Value of their Adventure, do wilfully caſt away, burn, or otherwiſe deſtroy the Ships under their Charge, the ſame was made Felony, and the Perſon and Perſons ſo wilfully doing or procuring the ſame to be done, were to ſuffer Death.

XII. The Signification of this *Fœnus Nauticum*, is by the *Dutch* called, *Bomerie*, *Bodmerie*, *Boddemerii*, (ſo variouſly pronounced) from the Keel* or Bottom of the Ship upon the Parallel, whereof the Rudder of a Ship doth govern and direct the ſame; *parte pro toto ſumpta, ita primum appellata, cum etiam lingua Gallorum antiqua & Britannica Bodo vel Bodun fundum aut profundum ſignet* † *in quem navis fundum, vel ipſam navem ejuſq; uſum mutuo accepta eſt pecunia, ſed poſtea latius pro fœnore nautico etiam uſurpari cœpit.* And the Money ſo taken up by the Maſter is done upon great Extremity, and that for the compleating of the Voyage when they are in Diſtreſs and Want in ſome Foreign Parts; and indeed ſuch taking up is indeed in the Nature of Mortgaging the Ship, for *le Neif eſt oblige al*

obl. & ibi Gothfr. & *alios.*
(*a*) *Hob.* 12. *Mo.* 918. *Noy* 95. *Latch.* 252. *Salk.* 34. *Lex. Merc.* 102, 122.
(*b*) *Salk.* 35. 2 *Mod. Caſes* 79. 16 *Car.* 2. *cap.* 6. §. 12. 11 *G.* 1. *c* 29. §. 6.

* *Joh. Locin. lib.* 2. *c.* 4. §. 1. *Latche's* Rep. *fol.* 252. *Scarborough's* Caſe.

† *Teſte Cambdeno in Britannia, p. m.* 149. *Locinius, lib.* 2. *cap.* 4. §. 1.

al payment de ceo, &c. And in the Inſtrument there is a Clauſe, that expreſſes that the Ship is engaged for the Performance of the ſame.

Monies that are advanced are upon two Securities, the one is on the bare Ship, the other upon the Perſon of the Borrower, ſometimes upon both: The firſt is where a Man takes up Monies and obliges himſelf, that if ſuch a Ship ſhall arrive at ſuch a Port, then to repay (perhaps) double the Sum lent; but if the Ship happens to miſcarry, then nothing.

Difference between this and other Loans at Intereſt.

This Money is likewiſe called *pecunia trajectitia*, becauſe, that upon the Lender's Danger or Adventure, it is carried beyond or over the Seas, ſo that if the Ship periſh, or all be ſpoiled, the Lender does loſe his whole Money lent: But on the contrary, Money lent at Intereſt is delivered at the Peril of the Borrower, and the Profit of this is merely the Price of the ſimple Loan, and is called *Uſura*. But the Profit of the other is a Reward for the Danger and Adventure of the Sea, which the Lender takes upon him during the Loan, which is to be underſtood until the Voyage be ended.

XIII. So likewiſe ſome will take up Monies, the Condition reciting, *Whereas there is ſuch a Ship*, naming her, *bound to* Amſterdam, *whereof ſuch a Man is Maſter*, (whereas indeed there it no ſuch Ship or Maſter in Nature) *that if that Ship ſhall not arrive at ſuch a Place within twelve Months, the Money agreed on to be paid ſhall be paid; but if the Ship ſhall arrive, then nothing.* The firſt of theſe is honourable and juſt, according to the laudable Practice among marine Perſons, and tho' the Advantage runs high, as 20, 30, nay ſometimes 40 *per Cent.* without Conſideration

Toto tit. dig. & Cod. de

of

of Time; (for the Monies are to be paid within ſo many Days after the Ship's ſafe Arrival;) yet in regard the Adventure is born by the Lender, for (if the Ship periſhes, the Advancer loſes,) the Laws and Practice of all Maritime Countries allow of the ſame. And therefore by the *Common Law*, if an Action of Debt be brought on ſuch an Inſtrument, the Defendant cannot plead the *Statute* of *Uſury*. And ſo it was adjudged, where one *Sharpley* had brought an Action of Debt on a Bond for Monies taken up upon *Bottomry*: The Defendant pleads the *Statute* of *Uſury*, and ſhewed, that a certain Ship called the made a Voyage to fiſh in *Newfoundland*, (which Voyage might be performed in eight Months) and the Plaintiff delivered 50 *l.* to the Defendant to pay 60 *l.* at the Return of the Ship to *D.* and if the ſaid Ship by Leakage or Tempeſt ſhould not return from *Newfoundland* to *D.* then the Defendant ſhould pay the principal Money; and if the Ship never returned, then nothing to be paid. Upon * Demurrer it was adjudged the ſame was not Uſury: For if the Ship had ſtaid at *Newfoundland* two or three Years, yet at her Return but 60 *l.* was to be paid, and if ſhe never returned, then nothing.

Naut. fœn. & Doctorum ſic Hardus in tit. Cod. de Naut. fœn. n. c.

Trajectitia pecunia propter periculum creditoris quamdiu navigat navis infinitas uſuras capere poteſt; upon which Law it was obſerved by *Anianus*, *Quia maris periculo committitur in quantas convenerit uſuras hanc pecuniam dare creditor poteſt.*

Verum enimvero hic proprie non verſari, damnatum fœnus, ſed compenſationem aliquam periculi, quod creditor contra naturam mutui in ſe recepit partem. Jo. Locinius, lib. 2. cap. 4. §. 1, & 2. * Trin. 6. Jac. in B. R. *Ja. Cro.* 208. *Sharpley* v. *Hurrel*, 1 *Brownl.* 2. *Sayer & Cleane*, 1 Levinz 54. & 1 *Sid.* 27. Cro. Jac. 508. 1 Keb. 711.

The other Advance which is upon a fictitious Suppoſition of a Ship and Maſter, wherein indeed there is no ſuch Nature, is more unconſcionable, the ſame being the common Practice that's uſed amongſt the *Italians*, and now on this ſide the Water, though

though the ſame is as to internal Right unjuſt, yet it is daily practiſed, and it was not long ſince adjudged † that ſuch Contract was good, according to the *Common Law* of this Realm, and that on a ſpecial Verdict.

4 C. B. Hill. 22, 23 Car. 2.

XIV. Moſt certain it is, that the greater the Danger is, if there be a real Adventure, the greater may the Profit be of the Monies advanced: And ſo hath the ſame been the Opinion of Civilians, and likewiſe ſome Divines; though ſome ſeem to be of Opinion, that any Profit or Advantage ought not to be made of Monies ſo lent, no more than of thoſe that are advanced on ſimple Loan, and on the Peril of the Borrower. However, all or moſt of the trading Nations of Chriſtendom do at this Day allow of the ſame, as a Matter moſt reaſonable, on account of the Contingency or Hazard that the Lender runs; and therefore ſuch Monies may be advanced ſeveral ways, and a Profit may ariſe ſo, that there runs a Peril on the Lender.

Vide Carolum Molinæum *de uſur. q.* 3. *n.* 92. *ait hoc approbant omnes Theologiunt creditor poſſit aliquid accipere ultra ſortem pro ſuſceptione periculi.* But ſurely that muſt be upon a real Venture, Cl. Salmaſius, *cap.* 9. *de modo uſur. fol.* 380, 188, 218. *Trajectitia pecunia propter periculum creditoris, quamdiu navigat navis, infinitas uſuras capere poteſt.* Upon which place *Anianus* obſerves, *Quia maris periculo committitur in quantas convenerit uſuras hanc pecuniam dare creditor poteſt. Vide Novel. Conſt.* 106, 110.

Bill to be relieved againſt a Bottomry Bond, *&c.* with Condition, that if the Ship *Suſannah*, bound for the *Eaſt-Indies*, ſhall return to *London* within 36 Months, or if the Ship does not return within 36 Months, not being taken or loſt by inevitable Accident within that Time, then the Money to be paid, &c. *The Ship was detained in Port Surat in India, by Embargo by the Great Mogul, ſo that the Ship could not ſail from Surat till after the* 36 *Months were elapſed, and in her return home was taken.*

ken by the French; but being after the 36 Months, the Bond was forfeited; but there being no Fault in the Maſter, and the Voyage delayed by inevitable Accident, (*viz.*) by Embargo by the Great Mogul, the Bill prayed to be relieved againſt the Penalty of the Bond. Per *Harcourt*, Ch. I cannot relieve in this Caſe againſt the expreſs Agreement of the Parties, but if the Defendant had inſured this Money upon the Ship, the Plaintiff ſhall have the Benefit of the Inſurance, upon allowing the Defendant the Charges of the Inſurance, if the Plaintiff pays the Money within three Months, Bill to be diſmiſt without Coſts. 4 *Vin. Abr.* 281. *pl.* 9.

Hullhead had inſured for *Hutchinſon* and Plaintiffs, his Aſſignees, on the Ship Eyles, with the Company, and the *Entry* in the Company's Book of the Contract was in ſhort Items, called, a Label, which *was*, viz. *At and from Fort St.* George *to* London, *loſt or not loſt.* And *the Policy was* ſoon after made out, and taken in the following Words; "*That the Adventure was to commence from the Ship's departing from Fort St.* George *to* London." And the Caſe was, that *before the Inſurance was made, the Ship was loſt in the River of* Bengal, *whither the Ship had been ſent from Fort St.* George *to refit.* Bill was brought by Plaintiffs to have the Inſurance-money paid, being 500 *l.* as a Loſs, *&c.* and founded the Equity, that the Policy was not made agreeable to the Label, according to which the Riſque is to commence from the Ship's coming firſt to Fort St. *George*, and then going to *Bengal* to refit, being a Thing of Neceſſity for performing the Voyage, was

no *Deviation*, and the Loſs, being during that Time, was within the Intent of Contract for the Inſuring. Lord Chancellor *Hardwicke* ſaid, this is not proper to determine here. Firſt Queſtion is, as to the Agreement. 2d, As to the Breach; and doubted as to the Agreement. The Memorandum is not a printed Form as to the material Points, and the Policy muſt be governed by that, if not varied. The Words in the Memorandum or Label (at Fort St. *George*) includes the ſtay of the Ship there, and the Policy follows the Words, but adds this, *viz.* The beginning of the Adventure to be from the Ship's departing from Fort St. *George* for *London*, which includes the Riſque whilſt the Ship ſtaid there; and this ſeems an Inconſiſtency in the Policy, firſt to deſcribe the Voyage, At and from, *&c.* and then to exclude the Riſque, At, *&c.* This ſeems a miſtake in writing the Policy, and is to be rectified as in the Caſe of Articles and a Settlement; and *decreed the words to be added in the Policy, for the Adventure to commence at and from Fort St.* George. id. ib. *pl.* 10. *Atk.* Rep. 145. *pl.* 258.

In Bankrupt Caſes, the Obligee in any Bottomree, or *Reſpondentia* Bond, and the Aſſured in any Policy of Inſurance, made and entered into upon a valuable Conſideration, *bonâ fide*, ſhall be admitted to Claim, and after the Loſs or Contingency happened, to prove his Debt and Demand, in reſpect of ſuch Bonds or Policy of Inſurance, in like manner, as if the Loſs or Contingency had happened before the time of iſſuing the Commiſſion againſt the Obligor or Inſurer; and ſhall be intitled, and ſhall have and receive a proportionable Part, Share and Dividend

Dividend of ſuch Bankrupt's Eſtate, in Proportion to the other Creditors of ſuch Bankrupt, in like manner, as if ſuch Loſs or Contingency had happened before ſuch Commiſſion iſſued. Stat. 19 *Geo.* 2. *ch.* 32. *Sect.* 2.

The Occaſion of making this Clauſe of the Statute was, that Merchants and other Traders frequently lent Money on Bottomree, or at *Reſpondentia*, and in the Courſe of their Trade frequently cauſed their Ships or Veſſels and the Goods and Merchandizes loaded thereon, to be inſured; and that where Commiſſions of Bankruptcy had iſſued againſt the Obligor in ſuch Bottomree, or *Reſpondentia* Bond, or the Under-writer or Aſſurer in ſuch Aſſurance, before the Loſs of the Ship or Goods, in ſuch Bond or Policy of Inſurance mentioned, had happened, it had been made a Queſtion, whether the Obligee or Obligees in ſuch Bond, or the Aſſured in ſuch Policy of Inſurance, ſhould be let in to prove their Debts, or be admitted to have any Dividend under ſuch Commiſſion, which was a Diſparagement to Trade, therefore the above Act was made. Preamble to above Statute.

Previous to Stat. 19 *Geo.* 2. the Obligor of a Bottomree Bond, becoming Bankrupt before the Return of the Ship, and the Ship not returning before the Diſtribution made, could have no Benefit of the Diſtribution under the Commiſſion. *Green*'s Spirit of the Bankrupt Laws, 141.

No Aſſurance to be made on Ships or Effects, *&c.* of Subjects, Intereſt or no Intereſt.

By Stat. 19 *Geo.* 2. *ch.* 37. *Sect.* 1. No Aſſurance ſhall be made by any Perſon, or Bodies Corporate, on any Ship belonging to his Majeſty, or any of his Subjects, or on any Goods on board any ſuch Ship, Intereſt or no Intereſt, or without further proof In-

tereſt than the Policy, or by way of Gaming or Wagering, or without benefit of Salvage to the Aſſurer, and every ſuch Aſſurance ſhall be void.

Aſſurance on private Ships of War, may be made Intereſt or no Intereſt.

By *Sect.* 2. Aſſurance on private Ships of War, fitted out by his Majeſty's Subjects ſolely to cruize againſt his Enemies, may be made by or for the Owners, Intereſt or no Intereſt, free of Average, and without Benefit of Salvage to the Aſſurer.

Aſſurance on Effects from *Spain* or *Portugal*.

By *Sect.* 3. Any Merchandizes or Effects from any Ports in *Europe* or *America*, in the Poſſeſſion of the Crowns of *Spain* or *Portugal*, may be aſſured in ſuch manner as if this Act had not been made.

Re-aſſurance in what Caſes admitted, &c.

By *Sect.* 4. It ſhall not be lawful to make Re-aſſurance, unleſs the Aſſurer be inſolvent, become a Bankrupt, or die; in either of which Caſes ſuch Aſſurer, his Executors, Adminiſtrators or Aſſigns, may make Re-aſſurance, to the amount of the Sum before by him aſſured; provided it be expreſſed in the Policy to be a Re-aſſurance.

The Conditions for lending Sums on Bottomree, upon Ships bound to or from the *Eaſt-Indies*.

By *Sect.* 5. All Money to be lent on Bottomry, or *Reſpondentia*, upon any Ship belonging to any of his Majeſty's Subjects bound to or from the *Eaſt-Indies*, ſhall be lent only on the Ship, or on the Effects on board ſuch Ship, and ſhall be ſo expreſſed in the Condition of the Bond; and the Benefit of Salvage ſhall be allowed to the Lender, his Agents or Aſſigns, who alone ſhall have a Right to make Aſſurance on the Money ſo lent; and no Borrower on Bottomry, or at *Reſpondentia*, ſhall recover more on any Aſſurance than the Value of his Intereſt on the Ship, or in the Effects on board, excluſive of the Money ſo borrowed; and in caſe it appear, that the Value

Value of his Share in the Ship, or Effects, doth not amount to the Sum he hath borrowed, he ſhall be reſponſible to the Lender for ſo much thereof, as he hath not laid out on the Ship or Merchandizes laden thereon, with Intereſt for the ſame, together with the Aſſurance, and all other Charges thereon, in the Proportion the Money not laid out bears to the whole Money lent, notwithſtanding the Ship and Merchandizes be totally loſt.

In all Actions Plaintiff to declare within 15 Days what Sums he hath aſſured.

By *Sect.* 6. In all Actions brought by the Aſſured upon any Policy of Aſſurance, the Plaintiff or his Agent ſhall, within fifteen Days after he is required ſo to do in Writing by the Defendant or his Agent, declare in Writing what Sum he hath aſſured in the whole, and what Sums he hath borrowed at *Reſpondentia*, or Bottomry, for the Voyage, or any part of the Voyage in queſtion.

Perſons ſued on Policies of Aſſurance to be brought into Court.

By *Sect.* 7. It ſhall be lawful for any Perſon, or Body Corporate, ſued on any Policy of Aſſurance, to bring into Court any Sum of Money; and if any ſuch Plaintiff refuſe to accept ſuch Sum with Coſts, to be taxed in Diſcharge of ſuch Action, and afterwards proceed to Trial, and the Jury aſſeſs not Damages exceeding the Sum brought into Court, ſuch Plaintiff ſhall pay to ſuch Defendant Coſts to be taxed.

Limitations of Actions.

By *Sect.* 8. This Act ſhall not extend to Perſons reſiding in any Parts in *Europe*, out of his Majeſty's Dominions, for whoſe Account any Aſſurance is made before the 29th of *September*, 1746; nor extend to Perſons reſiding in *Turkey*, or in *Aſia*, *Africa*, or *America*, for whoſe Account any Aſſurance is made before the 25th of *March*, 1747.

The Rule that governs a Court of Equity in Bottomry Bonds, is the Riſque of the Principal, but may be ſo contrived as to be conſtrued an Evaſion of the Statute, as well as any other Contract. *Atk.* Rep. 341.

XV. There is likewiſe a ſecond way of advancing Monies, called *Uſura Marina*, joining the advanced Monies and the Danger of the Sea together; and this is obliging ſometimes upon the Borrower's Ship, Goods and Perſon: The Product of which by Agreement will advance ſometimes 20, 30, and ſometimes 40 *per Cent.* as for Inſtance: A private Gentleman has 1000 *l.* ready Money lying by him, and he has Notice of an ingenious Merchant that has good Credit beyond Seas, and underſtands his Buſineſs fully, applies himſelf to him, and offers him a 1000 *l.* to be laid out in ſuch Commodities as the Merchant ſhall think convenient for that Port or Country the Borrower deſigns for, and that he will bear the Adventure of that Money during all that Voyage; (which he knows may be accompliſhed within a Year) hereupon the Contract is agreed upon, 6 *per Cent.* is accounted for the Intereſt, and 12 *per Cent.* for the Adventure outwards, and 12 *per Cent.* for the Goods homeward; ſo that upon the Return the Lender receives 30 *per Cent.* which amounts to 1300 *l.*

Uſura legitima ejus qui trajectitiam pecuniam trans mare vehendam fœneratur, id eſt, cum periculo ſuo centeſima eſt.

And this cannot be *Uſury* by the Laws of this Realm, for the Riſque and Danger that the Lender runs.

In the *Eaſt-India* and ſome other Companies.

XV. There is alſo another Way, but that is both honeſt and honourable, called *Uſufruit*, that is, a Stock in a Company or Society, which is perpetual; ſuch a Stock or Portion may be purchaſed, that is, the Advantage

tage or Benefit ariſing by the Improvement of the ſame.

As for inſtance, The *Eaſt-India* Company hath a *Stock* lodged in their Hands by divers Perſons, which they in the moſt prudent manner, as they ſee fit, imploy to ſuch Places as they judge moſt proper; if a Return is made, the Advantage of that is diſtributed to each Perſon that is any way intitled to that *Stock*; which Advantage is called a *Dividend*, and perhaps may afford ſome 20 or 30 *per Cent.* But on the other hand, if that Proportion of the Stock which goes out happens to miſcarry, the Abatement is proportionable, and ſo the Stock may be leſſened, unleſs that they will ſtay the *Dividends* to keep up the Stock; the which they may do; *For it is a Truſt repoſed of ſo many Mens Monies in their Hands, to yield them ſuch Advantage as they ſhall upon a juſt Account ſet out:* So that if a Man hath 1000 *l.* Stock, he cannot take the ſame out of the Great Stock whereby to leſſen the ſame, but he may transfer that *Uſufruit* by that cuſtomary Way, which they have to any other Perſon, for a valuable Conſideration in *infinitum.*

By Stat. 7 *Geo.* 3. *ch.* 49. No Dividend ſhall be made by the *Eaſt-India* Company, for any Time ſubſequent to 24 *June*, 1767, otherwiſe than in Purſuance of a Vote or Reſolution paſſed by Way of Balloting, in a General Court ſummoned for that Purpoſe, of the Meeting, whereof ſeven Days Notice ſhall be given in Writing fixed on the Royal Exchange of *London.*

By *Sect.* 2. No General Court between 8 *May*, 1767, and the beginning of next Seſſion of Parliament, ſhall declare any Increaſe of

of Dividend beyond the Rate of 10 *l. per Cent. per Annum.*

By *Sect.* 3. No Balloting upon any Queſtion propoſed in any General Court, relative either to the Declaration of a Dividend, or to any other Matter, ſhall be begun within leſs than eight Hours after the Adjournment or Breaking up of the Court, in which it ſhall have been determined that ſuch Queſtion ſhould be decided by Balloting, begun later than Noon, nor cloſed earlier than ſix in the Afternoon.

By Stat. 8 *Geo.* 3. *c.* 11. *Sect.* 1. No General Court at any Time before 1 *Feb.* 1769, ſhall declare or reſolve upon any Increaſe of Dividend beyond the Rate of 10 *l. per Cent. per Annum.*

CHAP. XII.

Of Impoſitions called Great Cuſtoms, Petty Cuſtoms, and Subſidies.

I. Impoſitions, *whether they may be commanded without the Three Eſtates, and of* Magna Charta *touching the ſame.*

II. *Of* Impoſitions *made voluntary by Conſent of Merchants, and of the Adnul of the ſame.*

III. *Of the Confirmation of the Great Charter for free Traffick; and of the Settlement now made on his Majeſty of the ſame.*

IV. *Of the Immunities formerly of the* Hanſiatick *Towns here in* England, *and when determined.*

V. *Of the Antiquity of Cuſtomers or Publicans as well in former Ages as at this preſent Time, in moſt Nations.*

VI. *Of the Impoſition called* Magna Cuſtuma.

VII. *Of that which is called* Parva Cuſtuma *payable by Strangers, and the* Act *called commonly* Charta Mercatoria.

VIII. *Of*

VIII. *Of Subſidy, and of what, and the Rates how ſet.*
IX. *Of Subſidy by Strangers on Wines.*
X. *Of Goods not rated how to pay.*
XI. *Of the Subſidy Duty for Cloths.*

I. IMPOSITIONS neither in the Time of War, or other the greateſt Neceſſity or Occaſion that may be (much leſs in the Time of Peace) neither upon Foreign nor Inland Commodities of what Nature ſoever, be they never ſo ſuperfluous or unneceſſary, neither upon Merchants, Strangers, nor Denizens, may be laid by the King's abſolute Power without Aſſent of Parliament, be it never ſo ſhort a Time.

By the Statute of *Magna Charta*, *Chap.* 30. *All Merchants, if they were not openly prohibited before, ſhall have their ſafe and ſure Conducts, to enter and depart, to go and tarry in the Realm, as well by Land as by Water, to buy and ſell without any evil Tolls, by the old and rightful Cuſtoms (except in time of War) and if they be of the Land making War againſt us, and be found in our Realm at the Beginning of the War, they ſhall be attached without Harm of Body or Goods, until it be known to us, or our Juſtices, how our Merchants be intreated there in the Land making War againſt us.* The Statute of which this is a Branch, is the moſt ancient Statute Law we have, won and ſealed with the Blood of our Anceſtors, and ſo reverenced in former Times, that it hath been twenty-nine Times ſolemnly confirmed in Parliament.

Cuſtoms, Subſidies, Tolls, Exciſes, Impoſts, and other Duties upon Commodities imported or exported are due to the particular Princes or States, by the general Law of Nations, as a Matter inherent to their Prerogatives, as they are the abſolute Commanders,

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Proprietors, and Maintainers of the Harbours, Havens and Ports, where the Commodities are exported or imported: And all Merchants are bound to take Notice thereof, and obſerve the ſame, according to the Feudal Laws, Conſtitutions and Proceedings therein uſed in all Countries reſpectively, whereby they are ſecured and defended in their Trade and Traffick. Or otherwiſe in Breach of not obſerving ſuch Laws and Conſtitutions, they are in danger of Mulcts, Fines, Loſs and Forfeitures of their Goods and Commodities. To give an exact Account of the Nature, Antiquity, ſeveral Sorts of Cuſtoms, Subſidies, Impoſts, and other Duties relating to Merchants, would take up too large a Compaſs for this Treatiſe, therefore ſhall refer as to the Nature of them to the ſeveral Books of my Lord *Coke*, in his 2 *Inſtit.* upon the *Stat.* of *Magna Charta*, *Cap.* 30. and other Statutes and Books which are many on this Subject.

Rot. Almaign. 3 *Ed.* 3. *Rot. Clauſ.* 26 *Ed.* 1. *Extract. Bruxelles.*

II. *Impoſitions* were in ſome ſort done *Conſenſu Mercatorum*, by *Edward* the Firſt, and *Edward* the Third: And again in *Henry* the Eighth, of which the Houſe of *Burgundy* complained, as againſt the Treaty of Entercourſe.

King *Henry* the Third finding, that ſuch a *Modus* of Impoſition tended to the Deſtruction of Trade, and apparent Overthrow of Commerce, and was againſt the Great Charter, made Proclamation *Anno* 16, in all Ports of *England*, that all Merchants might come *faciendo rectas & debitas conſuetudines, nec ſibi timeant de malis tollis*, for that ſuch Impoſitions had no better Name than *Maletolts*.

Dorſ. Clauſ. an. 16 *H. n.* 3. *n.* 20.

The like was declared and done by *Edward* the Firſt, in the twenty-fifth Year of his Reign; and

and *Edward* the Second, in the eleventh and twelfth Years of his Reign. *Rot. Claus.* 11 *Ed.* 2.

And though the King cannot lay any Impoſition on Merchant or Merchandize without Aſſent in Parliament, yet the King by his Prerogative may reſtrain them from Trading (if not from any Chriſtian Foreign Prince) yet from any Infidel Realm, State or People, without his Royal Licence: And the Reaſon of this is, for that by ſuch Commerce it might give Occaſion for the Relinquiſhment of the Catholick Faith, and an Opportunity to adhere to Infideliſm; and therefore generally in *Edward* the Third's Time, Licenſes were frequently granted with this Preamble, that the King having ſpecial Truſt and Confidence, that the Party would not decline from his Faith, did licenſe him, *&c.* In the ſeventh Year of King *James* this very Matter came in Queſtion, upon Licenſe granted to a Merchant to trade to the *Eaſt-Indies*. *Vide Lane's* Report in *Bates's* Caſe, this Matter there debated. *Mitchelbourn* and *Mitchelbourn's* Caſe. C. B. 2 *Brownlow* 296.

III. In 2 *Ed.* 3. the Great Charter for free Traffick was confirmed; and about ſome three Years after there were Commiſſions granted for the raiſing of a new kind of Tallage, but the People complained; whereupon the Commiſſions were repealed, and he promiſed never to aſſeſs any but as in the Time of his Anceſtors. 12 *Ed.* 3. *Memb.* 22. *in dorſ. Rot. Almaigne.*

But this Prerogative Power of impoſing inward and outward upon Commodities over and above the ancient Cuſtom of Subſidy without a free Conſent in Parliament, is now ceaſed and ſettled; and that Queſtion, which for many Ages had been handled by the moſt learned of their Times, in the aſſerting and in the denying, will never more be remembered,

membered, the ſame being now eſtabliſhed by Act of Parliament: Which being managed for ſome time, was afterwards farmed out, and now again managed. The like having been done by former Kings, as did *Edward* the Third, with the * New and Old Cuſtoms of *London*, for 1000 Marks monthly to be paid unto the Wardrobe.

* *Clauſ. Anno.* 5 *Ed.* 3. *Orig.* 17 *Ed.* 3. *Rot.* 2.

Richard the Second, *Anno* 20, farmed out the Subſidy of Cloth in divers Counties.

Lane's Rep. *fol.* 22.

So *Edward* the Fourth, *Henry* the Eighth, Queen *Elizabeth*, and King *James*; the ſame having been uſed in former Ages, even in the beſt governed State, *Rome*, which let out Portions and Decims to the *Publicans*.

The old *Hanſe Towns*, viz. *Lubeck*, *Collen*, *Brunſwick*, *Dantzick*, and the reſt, had extraordinary Immunities granted unto them by our Third *Henry*, for their great Aſſiſtance, and furniſhing him in his Wars and naval Expeditions with ſo many Ships; and as they pretended, the King was not only to pay them for the Service of their Ships, but for the Veſſels themſelves in caſe they miſcarried: The King having concluded a Peace, and they being on their Return home for *Germany*, the moſt conſiderable Part of their Fleet miſcarried by Storm and Streſs of Weather, for which (according to Covenant) they demanded Reparation. The good King, in lieu of that which he wanted, *Money*, granted them divers Immunities; and amongſt others, they were to pay but 1 *per Cent.* Cuſtom, which continued till Queen *Mary*'s Time; and by the Advice of King *Philip*, ſhe enhanced the 1 to 20 *per Cent.* the *Hans* not only complained, but clamoured aloud for Breach of their ancient Privileges, confirmed unto them by

by long Preſcription from thirteen ſucceſſive Kings of *England*, and the which they pretended to have purchaſed with their Money. King *Philip* undertook to accommodate the Buſineſs, but Queen *Mary* dying, and he retiring, nothing was effected. Complaints being afterwards made to Queen *Elizabeth*, ſhe anſwered, *That as ſhe would not innovate any Thing, ſo ſhe would protect them ſtill in the Immunities and Condition ſhe found.* Hereupon their Navigation and Traffick was ſuſpended a while, which proved very advantageous to the *Engliſh*, for they tried what they could do themſelves herein; their Adventures and Returns proving ſucceſsful, they took the whole Trade into their own Hands, and ſo divided themſelves into Staples and Merchant-adventurers; the one reſiding conſtant at one Place, the other keeping their Courſe, and adventuring to other Towns and States abroad with Cloth and other Manufactures. This ſo nettled the *Hans*, that they deviſed all the Ways that a diſcontented People could, to draw upon our new *Staplers* or *Adventurers* the ill Opinion of other Nations and States: But that proving but of too ſmall a Force to ſtop the Current of ſo ſtrong a Trade as they had got footing into, they reſorted to ſome other; whereupon they applied themſelves to the Emperor, as being a Body incorporated to the Empire: And upon Complaint, obtained Ambaſſadors to the Queen to mediate the Buſineſs: But they returned ſtill *re infecta*. Hereupon the Queen cauſed a Proclamation to be publiſhed, *That the Merchants of the* Hans *ſhould be intreated and uſed as all other Strangers within her Dominions, in Point of Commerce, without any Mark of Diſtinction.*

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This inflamed them more, whereupon they bent their Forces more eagerly, and in an Imperial Diet at *Ratiſbone*, they procured that the *Engliſh* Merchants, who had aſſociated themſelves in Corporations, both in *Embden* and other Places, ſhould be adjudged *Monopoliſts*; whereupon there was a Comitial Edict procured againſt them, that they ſhould be exterminated and baniſhed out of all Parts of the Empire; which was done by *Suderman* a great Civilian. There was there at that time for the Queen as nimble a Man as *Suderman*, and he had the Chancellor of *Embden* to ſecond him, yet they could not ſtop the Edict, whereby our new erected Society of Adventurers were pronounced a Monopoly: Yet *Gilpin* played his Cards ſo well, that he prevailed the *Imperial Ban* ſhould not be publiſhed till after the Diet; and that in the Interim his Imperial Majeſty ſhould ſend an Ambaſſador to *England*, to advertiſe the Queen of ſuch Proceedings againſt her Merchants. But this made ſo little Impreſſion on the Queen, that the *Ban* grew rather ridiculous than formidable, for the Town of *Embden* harboured our Merchants notwithſtanding, and afterwards the Town of *Stode*, but the *Hanſiaticks* purſuing their Revenge, and they being not ſo able to protect them againſt the Imperial Ban, removed and ſettled themſelves in *Hamburgh*.

This Politick Princeſs, in Recompence of their Revenge, commanded another Proclamation to be publiſhed, 'That the *Hanſiatick* 'Merchants ſhould be allowed to trade into '*England* upon the ſame Conditions as they 'formerly did, provided the *Engliſh* Mer-'chants might have the ſame Privileges to 'reſide

'reſide and trade peaceably in *Stode* or *Hamburgh*, or any where elſe within the Precincts of the *Hans*.' This ſo incenſed and nettled them, that all Endeavours were made to cut off *Stode* and *Hamburgh* from being Members of the *Hans*, or of the Empire: But the Deſign was ſuſpended till they ſaw the Succeſs of 88, King *Philip* having promiſed to do them ſome good Offices in the Concern.

But the Queen finding that the *Hans* were not contented with that Equality ſhe had offered to make betwixt them and her own Subjects, but were uſing ſuch extraordinary Means, put forth another Proclamation, 'That they ſhould tranſport neither Corn, 'Victuals, Arms, Timber, Maſts, Cables, 'Metals, or any other Materials or Men to '*Spain*, or *Portugal*.' And not long after the Queen growing more redoubted and famous by the Overthrow of King *Philip*'s Invincible Armado, (as the Pope chriſtened it) the *Hans* began to deſpair of doing any good, eſpecially they having about ſome 60 Sail of their Ships taken about the River *Liſbon* by her Majeſty's Frigates, that were laden with *Ropas de contrabanda*. She notwithſtanding had Thoughts of diſcharging this Fleet, by endeavouring a Reconcilement of the Difference: But ſhe having Intelligence of an extraordinary Aſſembly at *Lubeck*, which had purpoſely met to conſult of Means to be revenged of her, ſhe thereupon made abſolute Prize of thoſe 60 Sail, only two were freed to carry home the ſad Tidings of their Brethrens Misfortune. Hereupon the *Pole* ſent a ranting Ambaſſador in the Behalf of the *Hans*, who ſpake of the Injuries done to the *Hans*,

in a high Tone. But the Queen herſelf ſuddenly anſwered him in a higher, with a Satisfaction no greater than what ſhe had done to others of the like Quality before.

This fortunate Claſhing for the 19 *per Cent.* on the Cuſtoms, has proved ever ſince advantageous for *England*, our Merchants have ever ſince beaten a peaceful and an uninterrupted Trade into *High* and *Low Germany*; and by their conſtant Trade in thoſe Parts have found a way thro' the *White Sea* to *Arch-Angel* and *Moſco*. The return of all which hath ſince vaſtly increaſed the *Riches* and *Strength of this Nation.*

Joſeph. locutus de Pompeio. l. 1. de Bello. Jud. c. 5. p. 720.

V. After the *Jews* became tributary to *Rome*, (which was acquired by *Pompey* threeſcore Years before the Birth of our Saviour) certain Officers or Commiſſioners were appointed by the *Romans* in all thoſe Places where their victorious Standards had claimed a Conqueſt, who uſed to appoint ſuch Officers or Commiſſioners to collect and gather up ſuch Cuſtom-money or Tribute as was exacted by the Senate. Thoſe that gathered up theſe publick Payments were termed *Publicani*, *Publicans*, and by reaſon of their cruel and oppreſſive Exaction, they became hateful in all Nations.

* *Sigon. de Antiq. Jur. Civ. Rom. l. 2. c. 4.* Luke 13. 2.

Every Province has its ſeveral Society or Company of Publicans; * every Society its diſtinct Governor: In which reſpect it is that *Zacheus* is called by the Evangeliſts, *Princeps Publicanorum*, the chief Receiver of the Tribute, or chief Publican: And all the Provincial Governors in theſe ſeveral Societies had one chief Maſter or Superintendant reſiding at *Rome*, unto whom the other ſubordinate Governors gave up their Accounts. Theſe Publicans were hated of all the *Roman* Provinces,

vinces, but especially of the *Jews*, because though it was chiefly maintained by the *Galileans*, yet it was generally inclined unto by the *Jews*, that Tribute ought not to be paid by them. This Hatred is confirmed by the Rabinnical Proverb, *Take not a Wife out of that Family wherein there is a Publican, for such are all Publicans.* Yea, a faithful Publican was so rare at *Rome* itself, that one *Sabinus*, for his honest managing of that Office, in an honourable Remembrance thereof, had certain Images with this Inscription, Καλῶς τελωνήσαντι *For the Faithful, Publican.* No marvel, that in Holy Writ Publicans and Sinners go Hand in Hand.

Is. Casaubon. Exercit. 3. 37.

Sueton. in Flav. Vesp. cap. 1.

But that most excellent Advice of my Lord *Shaftsbury* ought never to be forgot, but to be engraven in the Hearts of the Managers so well as over the Door of the *Custom-house*, viz.

Let me recommend to you so to manage the King's Justice, and the Revenues, as the King may have most Profit, and the Subject least Vexation. Raking for old Debts, the Number of Informations, Projects upon Concealments, I could not find (in the eleven Years Experience I had in this Court) ever to advantage the Crown; but such Proceedings have for the most part, delivered up the King's good Subjects into the Hands of the worst of Men, Clerk of the Court, Custom-house Officers, and Excise-men.

Vide the Earl of *Shaftsbury*'s Speech to Serjeant *Thurland*, 1673.

But now the World has been so long used to them, that in all or most Nations the particular Princes or States chuse out the most sage and prudent Men for that Employment.

VI. Cuſtoms are Duties certain and perpetual, payable to the King as the Inheritance of his Crown, for Merchandizes tranſported from and beyond the Seas from one Realm to another. *Magna-Cuſtuma & antiqua* is payable out of Native Commodities, *ſcilicet*, Wool, Wool-fells, and Hides, and that is certainly impoſed.

And this Cuſtom, which is called *Magna Cuſtuma*, is due to the King of common Right for four Cauſes.

1. For leave to depart the Kingdom, and to carry Commodities of the Realm out of it.

2. For the Intereſt and Dominion which the King hath in the Sea, and the Arms thereof.

3. Becauſe the King is the Guardian of all the Ports within the Realm, *& Cuſtos totius Regni.*

4. For Wharfage and Protection of Merchants upon the Seas againſt the Enemies of the Realm, and Pyrates.

VII. The Cuſtom which is called *Parva Cuſtuma*, is a Cuſtom or Duty payable by Merchant-Strangers, and begun in the Time of King *Edward* the Firſt, when they granted him, that they would pay to him and his Heirs Three Pence in the Pound for all Merchandizes exported and imported by them, *&c.* And that the Charter was, and may be of great Uſe, I have here inſerted the ſame, as it was faithfully tranſcribed out of the Roll in the *Tower*.

Dyer, 165.

For Merchant Strangers, concerning Liberties granted to them.

31 *Ed.* 1. *num.* 44. *intus.*

THE KING, to his Archbiſhops, *&c.* ſendeth Greeting. Concerning the Condition of all the Merchants of the Kingdoms, Lands, and Provinces under-written: That

That is to ſay, *Germany*, *France*, *Spain*, *Portugal*, *Navarre*, *Lombardy*, *Tuſcany*, *Provence*, *Catalonia*; Our Dukedoms of *Aquitain*, *Thouloufe*, *Turein*, *Flanders*, *Brabant*, and all other Lands, and Foreign Places by what Name ſoever called, coming into Our Kingdom of *England*, and there remaining.

We being very ſollicitous, out of Our ſpecial Care, that under our Dominion, a Freedom of Tranquillity, and full Security for the ſaid Merchants may be provided for the future, ſo as they may the more readily apply themſelves to the Service of Us, and of Our Kingdom, We graciouſly anſwering their Petitions, and ordaining more amply for ſecuring their Condition in form following underwritten, are pleaſed to grant to the ſaid Merchants for Us, and Our Heirs for ever.

Imprimis, That is to ſay, That all Merchants of the ſaid Kingdoms and Lands, may come from any other Place ſafe and ſecure under Our Tuition and Protection into Our ſaid Kingdom of *England*, and every where within our Dominion, with their Merchandizes of what ſort ſoever, and be unmoleſted and quiet concerning * Murage, † Pontage, and ‖ Pavage, and that within Our ſaid Kingdom and Dominion, they may traffick in the Cities, Boroughs, and Market-Towns, only in groſs, as well with Natives or Inhabitants of this Our Kingdom and Dominion aforeſaid, as with Strangers, Foreign and Domeſtick: But ſo, as their Wares, vulgarly called *Mercery*, or the *SPECIES thereof*, they may ſell by Retail, as formerly hath been accuſtomed. And that all the ſaid Merchants may carry, or cauſe to be carried, whither they pleaſe, their Merchandize which they have

* *Repairing public Walls.*
† *Bridges.*
‖ *Pavements.*

brought into Our ſaid Kingdom and Dominion, or otherwiſe acquired, except to the Lands of the manifeſt and notorious Enemies of Our Kingdom, paying the Cuſtoms which ſhall be due, Wines only excepted, which ſhall not be exported out of Our ſaid Kingdom or Dominion, after they have been imported into Our ſaid Kingdom or Dominion, without Our Pleaſure and eſpecial Licence, by any Way or Means whatſoever.

Item, That the ſaid Merchants may lodge ~~in~~ the Cities, Boroughs, and Towns aforeſaid, at their own Pleaſure, and there ſtay with their Goods, to the Content of them who entertain them.

Item, That every Contract made by the ſaid Merchants with what Perſons ſoever, and from what Places ſoever, for what kind of Merchandizes ſoever, ſhall be firm and ſtable, ſo that neither of the Merchants ſhall depart from, or go back from his Bargain, after a *Gods-penny* is given and received between the principal Perſons contracting; and if it happen that a Contention ariſe on the ſaid Contract, there ſhall be a Tryal, or Inquiſition, according to the Uſages and Cuſtoms of the Fairs, and Towns where ſuch Contract ſhall be made or begun.

Item, We promiſe to the aforeſaid Merchants, and for Us, and our Heirs, for ever grant, that we by no means whatſoever will make, nor ſuffer to be made, any Prize, or Arreſt, or Detention by Occaſion of Prize, for the future, upon their ſaid Wares, Merchandizes, or other their Goods by Us, or by any other or others in any Caſe and Neceſſity whatſoever, againſt the Will of the ſaid Merchants, without

without the Price preſently paid, for which the ſaid Merchants might ſell to others Wares of the like ſort for, or otherwiſe to ſatisfy them, ſo as they ſhall repute themſelves contented. And that no Appraiſement or Value ſhall be put upon the ſaid Merchants Wares, Merchandizes, or Goods, by Us or Our Miniſters.

Item, We will, that all Bailiffs, and Officers of Fairs, Cities, Boroughs, and Market Towns, ſhall do ſpeedy Juſtice to the ſaid Merchants, complaining to them, from Day to Day, without Delay, according to the *Merchants Law*, concerning all and every thing which by the ſaid *Law* may be determined. And if any Defect ſhall happen to be found in any of Our Bailiffs or Miniſters, aforeſaid, whereby the ſaid Merchants, or any of their Factors ſhall ſuffer Loſs, although the Merchant recover his Loſſes againſt the Party in the whole, yet nevertheleſs, the Bailiff, or other Miniſters, as the Fault requires, ſhall be puniſhed at our Suit; and we grant the ſaid Puniſhment in favour of the Merchants aforeſaid, for compleating their Right.

Item, That in all kinds of Pleas, ſaving in the caſe of Crime for which the Pain of Death is liable to be inflicted, where the Merchant ſhall be impleaded, or he implead another, of whatſoever Condition he that is impleaded be of, whether a Foreigner or a Domeſtick, in the ſaid Fairs, Cities, or Boroughs, where there is a ſufficient Plenty of Merchants of the Lands aforeſaid, and Inquiſition there ought to be made; half of the Inquiſition ſhall be of the ſaid Foreign Merchants, and the other half of honeſt and lawful Men, where the Plea happens to be: And if a ſufficient Number of the Merchants of the ſaid

Lands ſhall not be found, let thoſe be put in the Inquiſition who ſhall be found fit in that Place, and let the Reſidue be of other good and fit Men, in the Places in which that Plaint ſhall be.

Item, We will, ordain, and appoint, that in every Market-Town and Fair of Our ſaid Kingdom, and elſewhere within Our Dominion, *Our Weight* is to be put in a certain Place, and before weighing thereof, the Scale to be empty in the Preſence of Buyer and Seller, and the Arms thereof to be equal; and when he hath ſet the Scale equal, he is forthwith to take off his Hands, ſo that it may remain equal, and that throughout our whole Kingdom and Dominion, there be one Weight and Meaſure, both of them ſealed with the Sign of our Standard, and that every one may have a Scale of one *Quarterom* and under, where, contrary to the Governor of the ſaid Place, or Liberty by Us, or Our Anceſtors, it was not granted, or contrary to the Cuſtom of the Villages and Fairs hitherto obſerved.

Item, We will and grant, that ſome certain, faithful and diſcreet Perſon reſiding in *London*, may be appointed a *Juſtice* in behalf of the before-mentioned Merchants, before whom they may plead ſpecially, and more ſpeedily recover their Debts, if the Sheriffs and Mayors diſtribute not to them, Day by Day, compleat and ſpeedy Juſtice, that then a Commiſſion be granted to the aforeſaid Merchants, beſides this preſent Charter, *viz.* concerning thoſe [*Goods*] which are to be conveyed between Merchants and Merchants, according to the *Merchants Law*.

Item, We ordain and appoint, and Our Will and Pleaſure is, for Us and Our Heirs, that

that this Ordinance and Statute be firmly kept for ever, notwithſtanding any Liberty whatſoever which We or our Heirs for the future ſhall grant; the ſaid Merchants ought not to loſe their above-written Liberties, or any of them: And for and in Conſideration of their obtaining the ſaid Liberties and free Uſages, and our Priſes to be remitted to them: All and ſingular the ſaid Merchants for themſelves, and all others on their Part, have heartily and unanimouſly granted to Us, that for every *Hogſhead of Wine* which they ſhall bring in, or cauſe to be brought in within our Kingdom or Dominion thereof; and from whence they are obliged to pay Freight to the Mariners, to pay to Us and to our Heirs, by the Name of Cuſtom, two Shillings over and above the antient Cuſtoms due, and accuſtomed to be paid in Money, within forty Days after the ſaid Wines are put on Shore out of the Ships.

Item, For every *Sack of Wool*, which the ſaid Merchants or others in their Names do buy, and out of this Kingdom tranſport, or buy to tranſport, ſhall pay forty Pence over and above the antient Cuſtom of half a Mark, which formerly was paid. And for a Laſt of Hides carried out of this our Kingdom and Dominion thereof to be ſold, half a Mark over and above that, which according to antient Cuſtom was formerly paid, and likewiſe for three hundred Woolfels to be carried out of this Kingdom, forty Pence, beſides that certain Sum, which according to antient Cuſtom was formerly given.

Item, Two Shillings for every Scarlet, and Cloth dyed in Grain.

Item,

Item, Eighteen Pence for every Cloth, in which part of a Grain Colour is intermixed.

Item, Twelve Pence for every other Cloth without Grain.

Item, Twelve Pence for every Quintal of Wax.

And whereas ſome of the ſaid Merchants deal in other Commodities, as Goods weighed with *Avoir-du-pois* Weights, and in other fine Goods, as Cloth of *Tarſe*, of Silk, of * *Candatis*, of Hair, and in divers other Merchandizes, in Horſes alſo, and other Animals, Corn, and other Wares and Merchandizes of different Sorts, which cannot eaſily be put to a certain Rate of Cuſtom: The ſaid Merchants have conſented to give Us and our Heirs for every twenty Shillings Eſtimation and Value of thoſe Wares and Merchandizes, by whatſoever Name they be called, three Pence in the Pound, upon the Entrance of their Wares or Merchandizes into Our Kingdom and Dominion aforeſaid, within twenty Days after ſuch Wares and Merchandizes ſhall be brought into Our Kingdom and Dominion aforeſaid, and there ſhall be unladen or ſold. And likewiſe three Pence for every twenty Shillings, at the exporting of what kind ſoever of Wares or Merchandizes bought in Our Kingdom and Dominion aforeſaid, beſides the antient Cuſtoms formerly given to Us, or to others. And over and above the Value and Eſtimation of the ſaid Wares and Merchandizes, for which three Pence for every twenty Shillings as aforeſaid are to be paid; they are to have Credit by Letters, by them to be produced from their Principals or Partners, and if they have none, let it be determined in this Caſe, by the Oaths

* *It is ſuppoſed it ſhould be* Sindonibus, *of Lawn, Cambrick, or other fine Linnen.*

Oaths of the ſaid Merchants, or in their Abſence, of their Servants.

Moreover, It may be lawful for the Society of the Merchants aforeſaid, to ſell Wool to the Fellows of the ſaid Society, and likewiſe to buy the ſame one of another within Our Kingdom and Dominion, without Payment of Cuſtom: Provided that the ſaid Wool come not to ſuch Hands whereby we may be defrauded of our Cuſtoms.

And furthermore be it known, that after the ſaid Merchants have once in any one Place within Our Kingdom and Dominion paid Our Cuſtoms granted, as aforeſaid, to Us, for their Merchandizes in form aforeſaid, and thereupon they have their Warrant, they ſhall be free, and unmoleſted in all other Places within Our Kingdom and Dominion, from Payment of the ſaid Cuſtom for the ſame Commodities or Merchandizes by the ſaid Warrant, whether ſuch Merchandizes remain within Our Kingdom and Dominion, or are carried out, except Wines, which, without our Leave or Licence as aforeſaid, are by no means to be exported out of our Kingdom.

We will alſo, and for Us, and our Heirs grant, that no Exaction, Priſe or Loan, or any other Burden ſhall be impoſed in any Part or Meaſure on the Perſons of the ſaid Merchants, their Merchandizes or Goods, contrary to the Form before expreſſed and granted.

Witneſs hereto, the Reverend Fathers, *Robert* Archbiſhop of *Canterbury*, Primate of all *England*, *Walter* Biſhop of *Coventry* and *Litchfield*, *Henry de Lacy*, Earl of *Lincoln*, *Humphrey de Bohun*, Earl of *Hereford* and *Eſſex*, and Conſtable of *England*, *Adomarus* of *Valentia*, *Galfrid* of *Geynvil*, *Hugh de le Spencer*, *Walter de Bello*

de Bello Campo, Steward of our Houſe, *Robert* of *Bures*, and others. Given by our Hand at *Weſtminſter* the Firſt Day of *February*.

Pro Mercatoribus Alienigenis de Libertatibus eis conceſſis.

REX Archiepiſc. &c. Salutem. Circa bonum ſtatum omnium Mercatorum ſubſcriptorum, Regnorum, Terrarum, & Provinciarum, videlicet, *Alemann*, *Franciæ*, *Hiſpaniæ*, *Portugaliæ*, *Navarr*. *Lumbardiæ*, *Tuſciæ*, *Provenciæ*, *Cataloniæ*; Ducatus noſtri *Aquitann*. *Tholoſan*. *Tatureini*, *Flandr*. *Brabant*. & omnium aliarum terrarum, & locorum extraneorum quocunque nomine cenſeantur, venientium in Regnum noſtrum *Angliæ*, & ibidem converſantium.

Nos precipua cura ſolicitat, qualiter ſub noſtro dominio tranquilitatis, & plene ſecuritatis, immunitas eiſdem Mercatoribus futuris temporibus preparetur: Ut itaque vota ipſorum reddantur ad noſtra, et Regni noſtri ſervicia promptiora; ipſorum Petitionibus favorabilitur annuentes, & pro ſtatu eorundem plenius aſſecurando, in forma que ſequitur ordinantes ſubſcripta, dictis Mercatoribus pro nobis & heredibus noſtris in perpetuum duximus concedenda.

Imprimis, Videlicet, quod omnes Mercatores dictorum Regnorum & Terrarum ſalvo & ſecure ſub tuitione & protectione noſtra in dictum Regnum noſtrum *Angliæ*, & ubique infra poteſtatem noſtram alibi veniant cum Merchandiſis ſuis quibuſcunque, de *Muragio*, *Pontagio*, & *Pavagio*, *liberi* & *quieti*, quodque infra idem Regnum & Poteſtatem noſtram, in Civitatibus, Burgis, & Villis Mercatoriis,

catoriis poſſent mercari, *duntaxat in groſſo*, tam cum Indigenis ſeu Incolis ejuſdem Regni, & Poteſtatis noſtræ predictæ quam cum *Alienigenis* extraneis vel privatis. Ita tamen quod, Merces que vulgariter *Merceriæ* vocantur ac *Species*, *minuciatim* vendi poſſint, prout antea fieri conſuevit: Et quod omnes predicti Mercatores Merchandiſas ſuas quas ipſos ad predictum Regnum & Poteſtatem noſtram adducere, ſeu infra idem Regnum & Poteſtatem noſtram emere, vel alias adquirere contigerit, poſſint quo voluerint, tam infra Regnum & Poteſtatem noſtram predictam, quam extra ducere, ſeu portari facere *præterquam ad terras manifeſtorum & notoriorum hoſtium Regni noſtri* ſolvendo conſuetudines quas debebunt, *Vinis duntaxat exceptis*, quæ de eodem Regno ſeu Poteſtate noſtra, poſtquam infra idem Regnum, ſeu Poteſtatem noſtram, ductæ fuerint, ſine voluntate noſtra & licentia ſpeciali, non liceat eis educere quoquo modo.

Item, Quod predicti Mercatores, in Civitatibus Burgis predictis pro voluntate ſua hoſpitari valeant, & morari Villis ac cum bonis ſuis, ad gratum ipſorum quorum fuerint hoſpitia ſive domus.

Item, Quod quilibet contractus per ipſos Mercatores cum quibuſcunque perſonis, undecunque genere ſuper quocunque, fuerint Merchandiſæ initus firmus ſit & ſtabilis; ita quod neuter Mercatorum ab illo contractu poſſit diſcedere, vel reſilire, poſtquam *denarius* inter principales perſonas contrahentes, datus fuerit & receptus. Et ſi forſan ſuper contractu hujuſmodi contentio oriatur, fiat inde probatio aut inquiſitio ſecundum uſus & conſuetudines Feriarum, & Villarum ubi dictum Contractum fieri contigeret, & iniri.

Item,

Item, Promittimus prefatis mercatoribus pro nobis, & hæredibus noſtris, in perpetuum concedentes. *Quod nullam priſam vel arreſtationem, ſeu dilationem occaſione priſæ de cætero de Mercimoniis, Merchandiſis, ſeu aliis bonis ſuis per nos, vel alium, ſeu alios, pro aliqua neceſſitate vel caſu, contra voluntatem ipſorum Mercatorum aliquatenus facienus, aut fieri patiemur; niſi ſtatim ſoluto pretio pro quo ipſi Mercatores aliis hujuſmodi mercimonia vendere poſſint, vel eis alias ſatisfactio ita quod reputent ſe contentos, & quod ſuper mercimonia, merchandiſas, ſeu bona ipſorum per nos, vel miniſtros noſtros, nulla appreciatio, aut æſtimatio imponetur.*

Item, Volumus, Quod omnes Ballivi, & Miniſtri Feriarum, Civitatum, Burgorum & Villarum Mercatoriarum, Mercatoribus antedictis conquerentibus coram eis, *celerem juſtitiam facient de die in diem ſine dilatione ſecundum LEGEM MERCATORIAM*, de univerſis & ſingulis quæ per eandum Legem poterunt terminari. Et ſi forte inveniatur defectus in aliquo Ballivorum vel Miniſtrorum predictorum unde iidem Mercatores, vel eorum aliquis dilectus incommoda ſuſtinuerint, vel ſuſtinuerit, licet Mercator verſus partem in principali recuperaverit dampna ſua, nihilominus Ballivus, vel Miniſter alius verſus Nos, prout delictum exigit, puniatur, & punitionem iſtam concedimus in favorem Mercatorum predictorum *pro eorum juſtitia maturanda.*

Item, Quod in omnibus generibus placitorum, ſalvo caſu criminis pro quo inſtigenda ſit poena mortis, ubi Mercator implacitatus fuerit vel alium implacitaverit, cujuſcunque conditionis idem implacitatus extiterit, extraneus vel privatus, in Nundinis, Civitatibus,

ſive

ſive Burgis ubi fuerit ſufficiens copia Mercatorum predictarum terrarum, & inquiſitio fieri debeat, *ſit medietas Inquiſitionis de eiſdem Mercatoribus, & medietas altera de aliis probis & legalibus hominibus loci illius, ubi placitum illud eſſe contigerit:* Et ſi de Mercatoribus dictarum Terrarum numerus non inveniatur ſufficiens, *ponantur in Inquiſitione illi qui idonei invenientur ibidem, et reſidui ſint de aliis bonis hominibus & idoneis, de locis in quibus placitum illud erit.*

Item, Volumus, Ordinamus & Statuimus, Quod in qualibet Villa Mercatoria & Feria Regni noſtri predicti, & alio infra Poteſtatem noſtram, *Pondus noſtrum* in certo loco ponatur, & ante ponderationem Statera in preſentia Emptoris & Venditoris vacua videatur, & quod brachia ſint equalia, & ex tunc Ponderator ponderet in equali & cum Strateram poſuerit in æquali, ſtatim amoveat manus ſuas ita quod remaneat in æquam, *quodq; per totum Regnum & Poteſtatem noſtram unum ſit pondus & una menſura, & ſigno Standardi noſtri ſignentur, & quod quilibet poſſit habere Stateram unius Quarteroni & infra*, ubi contra Dominum loci, aut libertatem per Nos, ſeu Anteceſſores noſtros conceſſam illud non fuerit, ſive contra Villarum aut Feriarum conſuetudinem hactenus obſervatam.

Item, Volumus & concedimus, Quod aliquis certus homo, & fidelis, & diſcretus *London* reſidens, aſſignetur *Juſtitiarius Mercatoribus memoratis*, coram quo valeant ſpecialiter placitare, & debita ſua recuperare celeriter, ſi Vicecomites & Majores eis non facerent de die in diem celeris juſtitiæ complementum, & inde fiat Commiſſio extra chartam preſentem conceſſa Mercatoribus antedictis, ſcilicet,

de

de hiis quæ ſunt inter Mercatores & Mercatores, ſecundum *LEGEM MERCATORIAM* decernenda.

Item, Ordinamus & Statuimus, & Ordinationem illam Statutumque *pro Nobis & Hæredibus noſtris in perpetuum Volumus firmiter obſervari*, quod pro quacunque libertate quam Nos vel Hæredes noſtri de cætero concedemus, prefati Mercatores ſupra-ſcriptas Libertates, vel earum aliquam non amittant. Pro ſupradictis autem Libertatibus & liberis Conſuetudinibus obtinendis, & Priſis noſtris remittendis eiſdem ſepedicti Mercatores univerſi & ſinguli pro ſe & omnibus aliis de partibus ſuis, Nobis concorditer & unanimiter conceſſerunt quod de qualibet *Dolio vini* quod adducent, vel adduci facient infra Regnum & Poteſtatem noſtram, *& unde Marinariis frettum ſolvere tenebuntur*, ſolvent Nobis & Heredibus noſtris *nomine Cuſtumæ*, duos Solidos ultra antiquas Cuſtumas debitas, & in Denariis ſolvi conſuetas, nobis aut aliis infra quadraginta dies poſtquam extra Naves ad Terram poſita fuerint dicta vina.

Item, De quolibet *Sacco Lanæ*, quem dicti Mercatores, aut alii nomine ipſorum ement & de Regno noſtro educent, aut emi & educi facient, ſolvent *quadraginta Denarios* de incremento, ultra Cuſtumam antiquam *dimidiæ Marcæ* que prius fuerat perſoluta. Et pro Laſto Coriorum extra Regnum & Poteſtatem noſtram vehendorum dimidiam Marcam, ſupra id quod ex antiqua Cuſtuma antea ſolvebatur; Et ſimiliter de trecentis pellibus Lanutis, extra Regnum & Poteſtatem noſtram, deducendis, quadraginta denariis ultra certum illud quod de antiqua Cuſtuma fuerat prius datum.

Item,

Item, Duos Solidos de *qualibet Scarleta*, & panno tincto in grano.

Item, Decem & octo denarios de quolibet panno in quo pars *grani fuerit intermixta.*

Item, Duodecim denarios de quolibet panno alio *ſine grano.*

Item, Duodecim denarios de quolibet *Ceræ* quintallo.

Cumque de prefatis Mercatoribus nonnulli eorum alias exerceant Merchandiſas, et de aliis rebus ſubtilibus, ſicut de pannis Tarſen, de Serico, de Cindatis, at Sera, & aliis diverſis mercibus, et de equis etiam, ac aliis animalibus, Blado, et aliis rebus, et Merchandiſis multimodis, quæ ad certam Cuſtumam facile poni non poterunt, iidem Mercatores conceſſerunt dare Nobis et Hæredibus noſtris de qualibet libra argenti eſtimationis ſeu valoris rerum et Merchandiſarum hujuſmodi quocunque nomine cenſeantur, *tres denarios de libra* in introitu rerum, & Merchandiſarum ipſarum in Regnum & Poteſtatem noſtram predictam infra viginti dies poſtquam hujuſmodi Res et Merchandiſæ in Regnum et Poteſtatem noſtram adductæ, et etiam ibidem exoneratæ, ſive venditæ, fuerint. *Et ſimiliter* tres denarios de qualibet libra argenti in eductione quarumcunque rerum, & Merchandiſarum hujuſmodi emptarum in Regno et Poteſtate noſtra predictis, ultra Cuſtumas antiquas nobis, aut aliis ante datas. *Et ſuper* valore et eſtimatione rerum et Merchandiſarum hujuſmodi, de quibus tres denarii de qualibet libra argenti ſicut prædicitur ſunt ſolvendi; credatur eis per literas quas de Dominis aut ſociis ſuis oſtendere poterunt, et ſi literas not habeant, Stetur in hac parte ipſorum mercatorum ſi præſentes fuerint, vel vallettorum

ſuorum in eorundem mercatorum abſentia juramentis

Liceat inſuper Sociis de Societate mercatorum predictorum infra Regnum et Poteſtatem noſtram predictam, Lanas vendere aliis ſociis ſuis, et ſimiliter emere ab eiſdem abſque Cuſtuma ſolvenda; ita tamen quod dictæ Lanæ ad tales manus non deveniant, quod de Cuſtuma nobis debita defraudemur.

Et præterea eſt ſciendum, Quod poſtquam ſæpedicti Mercatores ſemel in uno loco infra Regnum et Poteſtatem noſtram Cuſtumam nobis conceſſam ſuperius, pro Merchandiſis ſuis in forma ſolverint ſupradicta et ſuum habeant inde *Warrantum*, erunt liberi et quieti in omnibus aliis locis infra Regnum et Poteſtatem noſtram predictam, de ſolutione Cuſtumæ hujuſmodi pro eiſdem Merchandiſis, ſeu Mercimoniis per idem Warrantum, ſive hujuſmodi merchandiſæ infra Regnum et Poteſtatem noſtram remaneant, ſive exterius deferantur, Exceptis vinis que de Regno & Poteſtate prædictis, ſine voluntate et licentia noſtra ſicut prædictum eſt, nullatenus educantur.

Volumus autem, ac pro Nobis & Hæredibus noſtris concedimus, Quod nulla Exactio, Priſa vel Preſtatio, aut aliquod aliud onus ſuper perſonas mercatorum prædictorum, merchandiſas, ſeu bona eorundem aliquatenus imponatur, contra formam expreſſam ſuperius, & conceſſam.

Hiis teſtibus venerabilibus Patribus *Roberto Cantuarienſi* Archiepiſcopo totius *Angliæ* Primate, *Waltero Coventr.* et *Litchf.* Epiſcope, *Henrie de Lacy*, Comite *Lincoln Humfrido de Bohun*, Comite *Hereford. & Eſſex.* ac Conſtabular. *Angl. Adomar. de Valentia*, *Galfrido de Geynvill*,

Geynvill, Hugone de le Spencer, Waltero de Bello Campo Seneſcallo Hoſpitii noſtri, *Roberto de Bures*, et aliis. Dat. per manum noſtram apud *Weſt.* primo die Febr.

Upon an Information for not paying of Cuſtom for Linnen Cloth, the Caſe was thus: The Defendants were born within the Realm, their Father being an Alien, but their Mother was born here, the Queſtion was, whether the Defendants ſo born ſhould pay Aliens Cuſtom or not? Becauſe the Attorney General ſaid, that Directions were lately given in *Scaccario*, that the Iſſue of Aliens for the firſt Generation ſhould pay Aliens Duties; but here the Defendant's Mother was *Engliſh*, and the Court gave Liberty to find it ſpecially; but the Plaintiff would not inſiſt upon it, becauſe ſome part of the Goods were clearly forfeited, for not paying any Cuſtom at all, or making any Offer to pay it, ſave only by Poſt-entry after Seizure, and a Month lacking three Days after the firſt Entry of the Quantity and Parcels at the Cuſtom-Houſe. And a Verdict paſſed for the Plaintiff for that Part only, *Hardreſs.* 335, 336.

Goods conveyed to ſeveral Ports ſhall not pay Cuſtom twice.

If Goods are landed, and the Cuſtom paid at one Port, and afterwards the Goods are conveyed croſs the Land, or by Sea, to another Port, Cuſtoms ſhall not be paid for them at the ſecond Port, and that this is not within the Stat of 3 *H.* 7. *cap.* 7. 1 *Sid.* 264. *Bruen. v. Roe.*

Banks had ſeized Cambricks and Hollands, becauſe they were landed at *Dover* without paying Cuſtom; and it was afterwards agreed, that the Owner ſhould pay the Cuſtom, and have his Goods again, and ſo it was done;

whereupon an Information was brought a gainſt *Banks* for the Goods on the Statute 3 *H.* 7. *c.* 7. and he pleaded not guilty, and gave in Evidence, that the Goods were entered in the Cuſtom-Houſe Book. But *per Curiam*, that was no Diſcharge to him for the Miſchief; for then when Goods are forfeited, every body will redeem them by paying Cuſtom: And therefore the Goods being once forfeited ſhall be the King's without Redemption, and the Officer is not diſcharged by delivering them over, as in *Trover*.

Compoſitions with the Farmers for the Forfeiture.

The Plaintiffs were Farmers of the King of his Cuſtoms, and the Defendants brought into Port a Ship with Goods and unladen, the Cuſtoms not paid: After they compounded with the King for the Forfeiture, (which the Farmers had not in their Grant) after the Farmers brought Debt againſt them for the Cuſtom of twelve Pence *per* Pound. The Defendants pleaded this Matter in Bar; and upon Demurrer Judgment *pro Quer.* for this Reaſon, becauſe the twelve Pence in the Pound became a Duty by bringing the Goods into the Haven, and a Chattel veſted. By *Tanfield*, this Cuſtom is due, when a Ship is brought within an Haven, with intent to unlade there, but not when they are caſt overboard by Tempeſt. *Salter* and *Garraway* againſt *Malapert*. 1 *Rolls Rep.* 383.

Duty for Salt taken as Prize.

Salt taken from a *Spaniard* by a *Dutchman*, by Commiſſion from *Scotland*, and brought into *Scotland*, and from thence into *England*, the Duty ſhall be paid for it as *Scotch* Salt: But if it had been taken by *Engliſh* Commiſſion, and only put into *Scotland*, it ſhould pay as *Engliſh* or Foreign Salt, within the Meaning

3 *Keb.* 510.

of

of the Statutes of the 12 *Car.* 2. *cap.* 18. *Sect.* 16. and 14 *Car.* 2. *cap.* 11. *Sect.* 38.

VIII. Subsidy is a Duty payable for Merchandizes exported and imported, granted by Act of Parliament for the Life of the King. And are, Sir *John Davies* in the Case of *Customs.*

1. Aids and Subsidies payable out of Native Commodities exported and imported.

2. *Tunnage*, which is a Subsidy out of Wines of all sorts; and *Poundage*, which is a Subsidy granted out of all Commodities exported and imported, except Wines and antient Staple Commodities, and is the twentieth Part of the Merchandise, Imposts or Duties payable for Merchandizes rated and assessed by Parliament; and then they are in the Nature of Subsidies imposed by the King's Prerogative. *Vide* the Stat. 12 *Car.* 2. of Tunnage and Poundage.

The Rates are generally agreed on by the Commons House of Parliament, and are expressed in a Book, commonly called the *Rates of Merchandize*; that is to say, the Subsidy of Tunnage and Poundage, and the Subsidy of Woollen Cloaths or old Drapery, and are subscribed with the Hand of the Speaker.

IX. All Merchant-Strangers, bringing in any Sort of Wines, are to pay thirty Shillings on the Tun over and above the Rates which the Natives pay, including twenty Shillings the Tun formerly paid to his Majesty by the Name of *Southampton* Duties, for all Wines of the Growth of the *Levant*; for which Sort of Wines, the Stranger is also to pay to the Use of the Town of *Southampton*, for every Butt or Pipe ten Shillings. *Vide* in tit. Prisage.

Aliens are likewise to pay the antient Duty of Butlerage, which is two Shillings *per* Tun.

Directions in Tunnage.

Rule, *That all such Wines as shall be landed in any of the Out-Ports, and Custom paid, and afterwards brought to the Port of* London *by Certificate, shall pay so much more Custom as they paid short of the Duty due in the Port of* London.

Directions in Poundage.

For every Tun of Beer to be exported in shipping *English* built in Money must be paid Two Shillings: And for every Tun of Beer exported in any other Shipping in Money Six Shillings.

X. If there shall happen to be brought or carried out of this Realm any Goods, liable to the Payment of Custom and Subsidy which are ommitted in the Book of Rates, or are not now used to be brought in or carried out, or by reason of the great Diversity of the Value of some Goods could not be rated; in such case every Customer or Collector for the Time being, shall and may levy the said Custom and Subsidy of Poundage according to the Value and Price of such Goods, to be affirmed upon the Oath of the Merchant in the Presence of the Customer, Collector, Comptroller and Surveyor, or any two of them.

Directions for the Payment of the Subsidy upon Woollen Cloth, or old Drapery.

XI. Every *Englishman* shall pay for every short Cloth, containing in Length not above 28 Yards, and in Weight not above 64 lb. white or coloured, by him to be shipped and carried out of this Kingdom, Three Shillings Four Pence, being after the Rate of Two Farthings and half a Farthing *per* Pound Weight.

And so after that Rate for all other sorts of Cloths of greater Length and Weight, allowing not above Twenty-eight Yards, and Sixty-four Pound to a short Cloth; that is to say, for every Pound Weight over and above Sixty-four

four Pound, two Farthings and a half Farthing: And for all other ſorts of leſſer Cloths to be allowed to a ſhort Cloth; that is to ſay, every Stranger ſhall pay for every ſhort Cloth *cont.* in Length not above 28 Yards, and in Weight not above 64 lb. white or coloured, by him to be ſhipped or carried out of this Kingdom, Six Shillings Eight Pence, beſides the old Duty of One Shilling and Two Pence.

And ſo after that Rate for all other ſorts of Cloths of greater Length and Weight; and for all ſorts of leſſer Cloths to be allowed to a ſhort Cloth; that is to ſay,

Dorſet and *Somerſet Dozens*, *Rudge-waſhed*, *Cardinals*, *Pin-whites*, *Straits*, *Statuets*, *Stockbridges*, *Taveſtock*, ſeven of each ſort ſhall be allowed to a ſhort Cloth.

Tauntons, *Bridgewaters*, and *Dunſtars*, the fifty not exceeding 64 lb. in Weight; *Devon.* Dozens containing 12 or 13 Yards, in Weight 13 lb. five to be allowed to a ſhort Cloth.

Ordinary *Pennyſtones*, or *Foreſt Whites*, *cont.* between 12 or 13 Yards, and in Weight 28 Pounds, *Shorting Pennyſtones*, *cont.* 13 or 14 Yards, and in Weight 35 Pounds unſeized, four to be allowed to a ſhort Cloth.

Narrow *Yorkſhire* Kerſies Whites and Reds, *cont.* not above 17 or 18 Yards, and in Weight 22 Pound. *Hampſhire* ordinary Kerſies, *Newberry* Whites, and other Kerſies of like making, *cont.* 24 Yards, and in Weight 28 lb. Sorting *Hampſhire* Kerſies, *cont.* 28 Pound, and in Weight 32 Pound; three of them to make a ſhort Cloth.

Northern Dozens, ſingle ſorting *Pennyſtones*, *cont.* between 13 and 15 Yards, and in Weight

53 Pound frized, two of them to make a ſhort Cloth.

And the Northern Dozens double, one to be accounted for a ſhort Cloth.

All which ſhall go and be accounted for ſhort Cloths, and ſhall pay after the Rate of the ſhort Cloth before rated, and for over-weight two Farthings and One-half the Pound.

The new ſort of Cloth, called the *Spaniſh* Cloth, otherwiſe Narrow Liſt, Weſtern Broad Cloth, not exceeding 25 Yards in Length, and 43 Pounds in Weight, to be accounted Two-thirds of the ſhort Cloth before rated.

And for every Pound Weight exceeding 43 Pounds, Two Farthings and half Farthing the Pound Weight.

Cloth Raſhes, *alias* Cloth Serges, *cont.* 30 Yards, weighing 40 Pounds, to be accounted Two-thirds of the ſhort Cloth before rated.

And for every Pound exceeding 40 Pound Weight, Two Farthings and half a Farthing the Pound Weight.

And for any other ſort of Woollen Cloth of the Old or New Drapery, and not mentioned in that Book, to pay Two Farthings and half a Farthing the Pound Weight: And for any other ſort of Woollen Cloth of the Old or New Drapery, and not mentioned, is to pay Two Farthings and half a Farthing for the Subſidy of every Pound thereof.

By the Book of Rates annexed to the Act of Tunnage, and Poundage 5 *l. per Cent.* are allowed to the Merchants out of the Subſidy for Poundage, and 10 *l.* more for ready Money: And whereas 12 *d.* in the Pound is due and payable to the King for Poundage, 6 *d.* in the Pound more is given by another Act, called the Additional Duty. And whether or

not

not 5 *l. per Cent.* ſhall be allowed out of this Additional Duty, or not, was the Queſtion. *Per Curiam*, 5 *l. per Cent.* ought to be allowed out of the Additional Duty, as well as out of the 12 *d. per* Pound; for it appears in divers Places of the Book of Rates, that 6 *d.* in the Pound is looked upon as part of the Subſidy of Poundage, and 5 *l.* is to be allowed out of all Subſidies. The Book of Rates is incorporated into the Act of Parliament, and is part of it, ſo that whatever is there muſt be taken as compriſed in the Body of the Act itſelf.

Papillion, v. Sir *John Harriſon. Hardreſs* 349.

Since our Author wrote, there have been ſeveral ſevere Statutes againſt running uncuſtomed Goods; but as it would too much enlarge this Work to give Abſtracts of them here, we ſhall do little more than refer to thoſe of them which are moſt remarkable; the rather, becauſe the Offences cognizable by them are moſtly at Land, and triable by the Courſe and in the Courts of the Common Law.

By Statute 5 *Geo.* 1. *ch.* 21. §. 34, 35. If Perſons armed, tumultuouſly aſſembled, to the Number of Eight or more, forcibly hinder, beat or wound an Officer of the Cuſtoms in the due Execution of his Office, they are to be tranſported, not exceeding ſeven Years; and returning within that Time is Felony without Benefit of Clergy.

The Statute 9 *Geo.* 2. *ch.* 35. was a kind of general Pardon to all Offenders concerning the Cuſtoms; it enumerates many Offences, and acquits all Perſons guilty of them; but under ſome Reſtrictions, *viz.* any Perſon receiving the Benefit of that Act, for any of the Offences which made him liable to Tranſportation,

tation, will be a Felon without Clergy, if he again commits any ſuch like Offence.

And by the ſame Act three or more Perſons armed, who aſſemble to aſſiſt in running, *&c.* uncuſtomed Goods, are Felons, and to be tranſported for ſeven Years; and returning within that Time is Felony, *ſans* Clergy.

CHAP. XIII.

Of Impoſitions Subſequent, Conditional, Temporary, &c.

I. *Of Impoſitions on the Manufactures of* France, *by* Lex Talionis.

II. *On Vinegar, Perry, Cyder, and Rape, Cuſtoms payable by Deniſons and Strangers, and Logwood made importable.*

III. *On Ships that have not two Decks, and* 16 *Guns.*

IV. *On Salt, Beer, Cyder, Perry, Vinegar, a further Duty.*

V. *Of the Duty called* Coinage, *and upon what impoſed; and the temporary Impoſition called the Additional Duty.*

VI. *Of Goods particularly imported by Aliens; and Rules for petty Cuſtoms, and other Matters relating to Duties.*

VII. *Of Aliens Cuſtoms on Fiſh and other Commodities, and Rates upon the ſame.*

VIII. *Impoſitions on Foreign Liquors, and Rates on the ſame.*

IX. *Of Native Commodities, and ſuch as were formerly prohibited, may be tranſported, paying certain Duties.*

X. *Beer,* &c. *Exported; Skins, Leather,* &c. *tranſportable, paying certain Duties—Bullion and Coin only excepted.*

XI. *Of Species importable by any Nation.*

XII. *Of great and leſſer Officers Fees, and of Goods not paying one Pound Cuſtom in or out, what Fees to be taken.*

XIII. *Voluntary Gifts from ſome eſteemed no Bribes; and Rates about Payment of Fees.*
XIV. *Of Allowances for Jury, what.*

I. THERE are ſeveral Duties impoſed ſubſequent to the Duties payable by the Book of Rates, and over and above the ſame; that is to ſay, on all Ships belonging to the *French* King's Subjects, which ſhall lade or unlade any Goods in this Kingdom, or ſet on Shore or take in any Paſſenger, or pay 20 *s. per* Tun: This was in Return for the *French* King's impoſing the Value of 50 *Solz* on every *Engliſh* Ship; this Complement laſted but three Weeks longer than the *French* King's; his removed, ours drops.

Subſequent Impoſitions to the Act of Tunnage and Poundage, and the Book of Rates.

12 *Car.* 2.

II. So likewiſe on Vinegar, Perry, Rape, Cyder, and Cyder-eager, imported from Foreign Parts *per Engliſh*, ſhall anſwer Six Pounds Ten Shillings *per* Tun; if by Strangers, then but Six Pounds.

This collected as the Tunnage and Poundage is directed.

But if they ſhall export, then Three Pounds Ten Shillings *per* Tun ſhall be repaid to the *Engliſh*, and Four Pounds Fifteen Shillings to be repaid to Strangers.

14 *Car.* 2. *c.* 11. For preventing of Frauds.

The Statute of *Eliz.* prohibiting the Importation of Logwood, repealed; and the ſame may be imported, paying 5 *l per* Tun: And in caſe of Exportation, then to be repaid 4 *l. per* Tun.

14 *Car.* 2. *c.* 11.

III. The Parliament taking likewiſe again into conſideration the Encouragement of Trading in Ships of Force, have impoſed on all Goods and Merchandize, imported and exported from and to the Mediterranean Sea, beyond *Malaga*, in any Ship that hath not two Decks and Sixteen Pieces of Ordnance mounted, and two Men to each Gun, to pay over

over and above the Rates impoſed by the Book of Rates one *per Cent.* This does not extend to Ships laden with Fiſh, or half laden with Fiſh and other Commodities.

14 *Car.* 2. *cap.* 11.

IV. So likewiſe on Salt out of *Scotland* into *England*, One half-penny *per Gallon.*

Again, there is impoſed on Wines, Vinegar, Cyder and Beer, Ten Shillings *per* Tun, and on Brandy and Strong-waters Twenty Shillings *per* Tun. For the Coinage Duty, the Monies that ariſe on this Duty are to be paid at the Cuſtom-Houſe to the Collectors and Officers, to be by them kept apart from all other Monies, and paid quarterly into the *Exchequer* without Salary or Fee: The Goods are forfeitable for Non-payment of this Duty; and the ſame is to be repaid, if the Goods are tranſported within one Year.

18 *Car.* 2. *cap.* 5.

22 *Car.* 2. *c.* 3. V. There was likewiſe an Impoſition of 12 *l.* *per* Tun on *Spaniſh* Wines, and 8 *l.* *per* Tun on *French* Wines and Vinegar, which was but temporary, and ended the 24th of *June* 1678.

Per Act of Nav. 12 *Car.* *cap.* 18. *Vide* the Statutes and the particular Commodities enumeratedthere. VI. There are alſo Duties payable by all Aliens for Goods imported in Aliens Ships, commonly called *Navigation Duties.*

So likewiſe all Goods of the Growth, Product, or Manufacture of *Muſcovia* or *Ruſſia*, and alſo of *Turkey.*

Note, That in all Caſes where petty Cuſtom inward is payable, it is to be underſtood of the fourth Part of the full Subſidy, according to the Rates and Value in the Book of Rates, before the 5 *l.* *per Cent.* is deducted.

Rule.

Rule. *Note*, Wines of all ſorts imported are to pay Aliens Duties.

Vid. the Table of Strangers Duties upon Wines. *Note*, That the Neat Subſidy of Vinegar, Perry, Rape, Cyder, and Cyder-eager, both in

in *London* and Out-Ports, is the ſame with the Subſidy of *French* Wines, payable in *London*. 14 *Car.* 2. *Vid.* Table of *French* Wines.

VII. So likewiſe there is a further Impoſition, called Aliens Cuſtom, for all Fiſh, Oil, Blubber, Whale-bone, or Whale-fins, not being caught in Veſſels belonging to *Engliſh* Men, are to pay double Strangers Cuſtom. Act of Navigation, 12 *Car.* 2. *c.* 18. Act of Trade, 15 *Car.* 2. *c.* 7. *Vide* Stat. and the Particulars enumerated.

So likewiſe Cuſtom and Impoſt to be paid for ſeveral ſorts of ſalted or dried Fiſh, not imported in Ships *Engliſh* built, or belonging to *England*, and not having been ſtifled and caught in ſuch Ships. *Rule.*

Upon which ACT, *Note*, That the 5 *l. per Cent.* is not to be allowed of the Petty Cuſtom.

VIII. There is likewiſe an Exciſe or Impoſt upon Foreign Liquors imported; that is to ſay, Beer or Ale 6 *s. per* Barrel; Cyder or Perry the Tun, Ten Shillings; Brandy or Strong-waters perfectly made, 8 *d. per* Gallon.

If any of thoſe Goods be landed before thoſe Duties be fully paid, and Warrant ſigned, and without Preſence of an Officer, they are forfeited, to the Informer half.

IX. There are likewiſe Duties impoſed on ſeveral Commodities exported, by ſeveral Acts of Parliament ſubſequent to the Act of Tunnage and Poundage.

Coals tranſported in *Engliſh* Shipping and Navigation for his Majeſty's Plantations, in lieu of all Cuſtom, ſhall pay only for one Chaldron of *Newcaſtle* Meaſure 1 *s.* 8 *d.* For one Chaldron *London* Meaſure 1 *s.* provided good Security be given for landing the ſaid Coals accordingly. Act for Trade, 15 *Car.* 2. *cap.* 7.

There

Act for Tillage, 22 *Car.* 2. *cap.* 3.

There are likewiſe ſeveral Native Commodities and Cattle, prohibited by divers Acts of Parliament, not to be tranſported, unleſs ſold under ſuch Prizes; but *non obſtante* they may now be exported, paying Cuſtom according to the Book of Rates.

20 *Car.* 2. *cap.* 5.

X. There is likewiſe an Impoſition on Beer, Ale, and Mum to be exported, to pay 1 *s.* *per* Tun and no more; but this is but *pro tempore* for ſix Years.

20 *Car.* 2. *cap.* 5.

So likewiſe Leather of all Sorts, Sheep-ſkins, Calve-ſkins, tanned or dreſſed, *non obſtante* any former Law, paying for each hundred Weight, *cont.* 112 lb. Weight, one Shilling and no more: This ended on the 25*th of March* 1675, and both of them to the End of the next Seſſions of Parliament after.

Act for Trade, 15 *Car.* 2. *cap.* 7.

Likewiſe all Sorts of Foreign Coin, or Bullion of Gold or Silver, may be exported without paying any Duty or Fee for the ſame, Entry being firſt made in the Cuſtom-houſe; the like for Diamonds, precious Stones, Jewels, and Pearls of all ſorts.

Proclam. Car. Regis, *Dec.* 20, 1662, *Aug.* 26, 1663. But ſee 14 *Car.* 2. concerning Cuſtoms.

XI. All Perſons whatſoever may import, from any Place beyond Sea in *Engliſh* Ships, Mace, Nutmegs, Cinamon, Cloves, into *England*, *Wales*, *Jerſey*, *Guernſey*, paying the Cuſtoms thereof; provided before the lading thereof they give Notice to the Commiſſioners or Farmers of the Cuſtoms, of the Quantity and Quality they intend to lade, with the Name of the Veſſel in which they intend to import the ſame, and procure a Licence under the Hands of the ſaid Farmers or Commiſſioners, or any three of them, for the importing the ſame.

Note, If Goods are wrecked, and the Lord ſeizes them, yet they ought not to pay Cuſtom.

tom. * So held by three Juſtices, *contra.* Chief Juſtice *Treby*, *Trin.* 11 *W.* 3. *Co. Pl. Courtrey* againſt *Bower*.

* *Moor* 224. Lord *Cobham*'s Caſe. The like not long ſince adjudged in the *Common Pleas* (on a ſpecial Verdict found at St. *Edmond's-Bury* in *Suffolk*) *about Mich.* 25, or *Hill.* 25, & 26 *Car.* 2.

XII. Fees and Allowances due and payable to the Officers of his Majeſty's Cuſtoms and Subſidies in the Port of *London*, and the Members and Creeks thereunto belonging; that is to ſay, to the Officers of the Petty Cuſtoms Outwards, Subſidy Outwards, Petty Cuſtoms Inwards, Subſidies Inwards; Great Cuſtoms, Clerks Fees Inwards and Outwards, the King's Waiters, being in number Eighteen, the Regiſter of the King's Warrants, the Uſher of the Cuſtom-houſe, Gaugers of *French* Veſſels, Chief Searcher, and his Majeſty's five under Searchers in the Port of *London*; and the two Searchers at *Graveſend*, were all ſet and entered in a Table; the ſame was ſettled by the Commons Houſe of Parliament, and ſigned by the Right Honourable Sir *Edward Turner*, late Lord Chief Baron of his Majeſty's Court of *Exchequer*, and then Speaker to the Commons Houſe of Parliament; at which Time the Queſtion being put, that for all Goods, not paying one Pound Cuſtom in or out, there ſhall be but half Fees taken for all Cocquets, Warrants, Debentures, Tranſires, or Certificates, it was reſolved in the Affirmative.

Virtute cujuſdam Ordin. à Dom. Com. Sabbati 17 *Maij*, 14. *Car.* 2. *Regis.*

XIII. Societies or Companies trading in a joint Stock, and making but one ſingle Entry, the Adventurers being many, the Table of Fees does not hinder, but the Officers and Waiters may receive ſuch Gratuity as the Company voluntarily give.

All

All Goods under the Value of 5 *l.* in the Book of Rates, paying Subsidy the Sum of 5 *s.* or less, shall pass without Payment of Fees.

English Merchants that shall land out of one Ship at one Time, (although the Receipt of the Subsidy be distributed into several Offices) shall not pay any more than for a single Entry.

The Goods of Partnership to pass, as if the Propriety were in one single Person.

Fish by *English*, in *English* Shipping or Vessels Inwards or Outwards all along the Coast, to pay no Fee.

Post-entries Inward to pass without Fee under five Shillings; if above five Shillings, and under forty Shillings, then Sixpence: But if the Custom to be paid exceed 40 *s.* then full Fees.

The Merchant shall pay for all Goods opening that shall be short entered, above 10 *s.* Custom.

The Merchant shall pay for weighing of all Goods that shall be short entered, above 20 *s.* Custom.

The Merchant is not to be at any Charge, if duly entered.

Tare and Tret, the first is the Weight of the Cask, or Bale, or Covering, wherein Goods are packed; the other is a Consideration allowed in the Weight

XIV. There is likewise to be allowed to the Merchants a certain Abatement called *Tare*, for Goods and Merchandize, the which is reduced into a Table, and cannot be deviated from in any Case within the Port of *London*, without special Direction of the Commissioners or Farmers; or in their Absence, of the Consent of the General Surveyors and Surveyor of the Warehouse, or of two of them at the least, whereof the Surveyor of the Warehouse to be one; and in the Out-Ports, not

not without the Consent and Advice of the Collector and Surveyor: Or where there is no Surveyor, by the Collector himself, giving speedy Notice to the Commissioners or Farmers of the Reason of so doing. for emptying and re-selling the Goods.

CHAP. XIV.

Of Scavage, Package, Porterage, Water-Baillage, Ports, Members, Creeks, the Port of *London*, and Places lawful to lade and unlade in.

I. Scavage, *what, where payable, and to whom.*
II. *Who pay the same, and how regulated and governed.*
III. *Goods omitted in the* Scavage *Table of Rates, how to pay.*
IV. *Of* Package, *how governed, and where payable.*
V. *Where Strangers shall pay as of old.*
VI. *Of Packers, Water-side Porters, what Duties Strangers are to pay for shipping out their Goods.*
VII. *Of the Duty of Water-Baillage.*
VIII. *Of Ports, Members, and Creeks; what are meant and understood by them as in reference to Action, lawful or unlawful.*
IX. *The several Ports, Members and Creeks in* England *and* Wales.
X. *Of the Extent of the Port of* London.
XI. *Of the several* Keys, Wharfs, *and other Places lawful for landing of Goods.*
XII. *What Goods are excepted, which may be shipped or landed at other Places.*

I. SCAVAGE is an antient *Toll* or *Custom* exacted by Mayors, Sheriffs, *&c.* of Merchant-Strangers for Wares, shewed or offered to Sale within their Precincts, which is prohibited by the Statute of 19 *H.* 7. *cap.* 8.

in a Charter of King *Henry* the Second to *Canterbury*, it is written *Scewinga*.

The City of *London* ſtill retains the Cuſtom, of which in an old printed Book of the Cuſtoms of *London* it is there mentioned, and how to be diſpoſed; of which Cuſtom, "halfen del apperteyneth to the Sheriffs, and the other halfen del to the Hoſtys, in whoſe Houſes the Merchants been lodged: And it is to wet that Scavage is the Shew, by Cauſe that Merchants ſhewen unto the Sheriffs Merchandizes, of the which Cuſtoms ought to be taken ore that any there be ſold, *&c.*"

22 *H.* 8. *c.* 8. II. The *Scavage* that is taken conſiſts of two Parts, that which is payable by Denizens, and that which is required of Aliens: And that all Perſons ſubject to ſuch Duties might not be impoſed upon, there are Tables mentioning the particular Duties ſet up and approved by the Lord Chancellor, Treaſurer, Preſident, Privy-Seal, Steward, and two Juſtices of the *King's-Bench* or *Common-Pleas*; and by them ſubſcribed, and any four of them at leaſt: The which Duties are on *Goods* Inwards and Outwards.

Per Order of K. *Charles* I. ſubſcribed by *William* Lord Biſhop of *London*. *H.* Earl of *Mancheſter*, L. C. J. *Brampſton*, and Lord *Littleton*.

III. *Note*, All Goods mentioned in the Table of *Scavage*, and not mentioned in the Table of Rates, ſhall pay after the Rate of one Penny in the Pound, according as they are expreſſed and valued in his Majeſty's Book of Rates, and all others not expreſſed therein, ſhall pay the ſame Rates according to the true Value.

Note, That all private Baulks, 8 Inches ſquare and upwards, are by the 23d Article annexed to the Book of Rates reputed Timber, and valued at 3 *d.* the Foot, 50 Foot making one Load, the Value of which is

12 *s.*

12 *s.* 6 *d.* and the Subſidy for one Load $\frac{5}{8}$ of one Penny, or one Half-penny and half one Farthing, out of which the 5 *per Cent.* is to be deducted.

IV. There is likewiſe another Duty called *Package*, the which is likewiſe ſet and rated in a Table, and the which is taken of all the ſeveral Commodities therein mentioned.

All Goods not mentioned in that *Table*, are to pay for *Package* Duties, after the Rate of one Penny in the Pound, according as they are expreſſed or valued in his Majeſty's Books of Rates, and all others not expreſſed therein ſhall pay the ſame Rate according to their true Value.

For every Entry in the Packer's Book for writing Bills to each Entry Outward, as uſually they have done, 12 *d.*

V. The Strangers are to pay the labouring Porters for making up their Goods, at their own Charge, as always they have done.

Strangers are likewiſe to pay the Water-ſide Porters belonging to the Package Office, ſuch Fees and Duties for landing and ſhipping their Goods, as they uſually have done within theſe ten Years.

VI. The Packers Water-ſide Porters have Tables of Duties for landing of Strangers Goods, and for the ſhipping out their Goods; and Goods not mentioned in the Table are to pay Porterage Duties, as other Goods do of like Bulk or Condition therein expreſſed.

VII. There is another ancient Duty called *Water-Baillage*, which the City of *London* have received time out of Mind, *viz.* for all Goods and Merchandizes imported, as well from any Port within the Realm to the Port of *London*, as from any Part out of the

Realm to the ſame, and ſo like Duties (with ſome Variances) for all ſuch Goods as ſhall be exported from the Port of *London* to any other Port within the Realm, ſo likewiſe without: Of this Duty all the Citizens and Freemen of the City are exempted; and though the ſame is very ancient, * and was once but ſmall, in Regard, within Memory, it was looked upon as an Honour for a Merchant to be a Citizen of *London*, and ſo conſequently freed; but now, eſpecially ſince the late Wars, abundance of Perſons, eminent both for Honours and Eſtates, being unwilling to entangle themſelves in the public Affairs of the City, do refuſe abſolutely to accept of the Freedom of the ſame, ſince which there have been great Conteſts with thoſe Traders; and though the Coaſt Duties have been agreed to, yet the Foreign now ariſing to ſome conſiderable Value, is highly diſputed. And though Charters, Acts of Parliament, Common-Councils, continued Tracts and Foot-ſteps of ancient Evidences and Records are yet extant, to evince and make out the moſt apparent Title that may be, the ſame nevertheleſs labours under the greateſt Difficulty amidſt the Diviſions of its Proprietors.

* 5 *July*, 1 *Joh.* 7 *R.* 2. *num.* 37.

1 *Aug.* 21 *R.* 2. entered in the City-Book, called *Dunthorn. fol.* 96. & 97. Repertory *ult. Aug.* 1. 9 *H.* 1. 2 *Oct.* 3 *Jac.* &c.

VIII. Port, or *locus publicus*, are thoſe Places to which the Officers of the Cuſtoms are appropriated, and which contain and include all the Privileges and Guidance of all Members and Creeks thereunto allotted.

Portus qua publicus non ſolum mercibus exonerandis inſervit, ſed ut naves ibi tutum receptaculum habeant, & jure debito ac ſecuritate fruantur Navigantes, quatenus innocuum iter & ſtationem quærunt. Hinc Portus & Navalia privilegio pacis publicæ gaudent. Arg. 1. *Leg.* 1. §. *ſtationem D. de flum.* cap. 2. *Jur. Nautic. Seud. c.* 1. §. 1. 4 *H.* 4. 20.

Members are thoſe Places where antiently a Cuſtom-houſe hath been kept, and Officers or

or their Deputies attending, and are lawful Places of Exportation or Importation.

Creeks are Places where commonly Officers are or have been placed by way of Prevention, not out of Duty or Right of Attendance, and are not lawful Places of Exportation or Importation, without particular Licence or Sufferance from the Port or Member under which it is placed.

IX. The ſeveral Ports and Members as now they account at the *Cuſtom-houſe*, are,

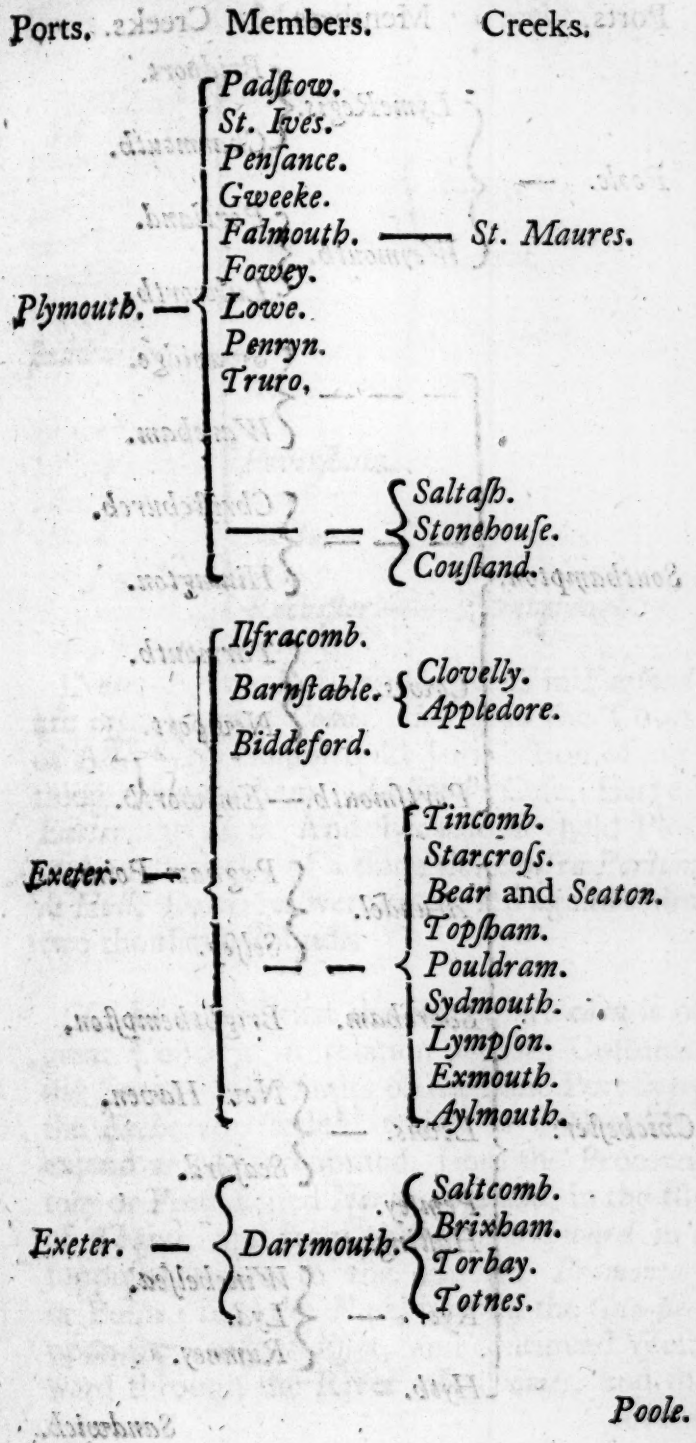
Portus eſt concluſus locus quo importantur merces & exportantur, l. 59. *de verb. Sign. Alias ſtatio, quod ibi tuto naves ſtare poſſint, leg.* 1. §. 13. *D. de flum.*

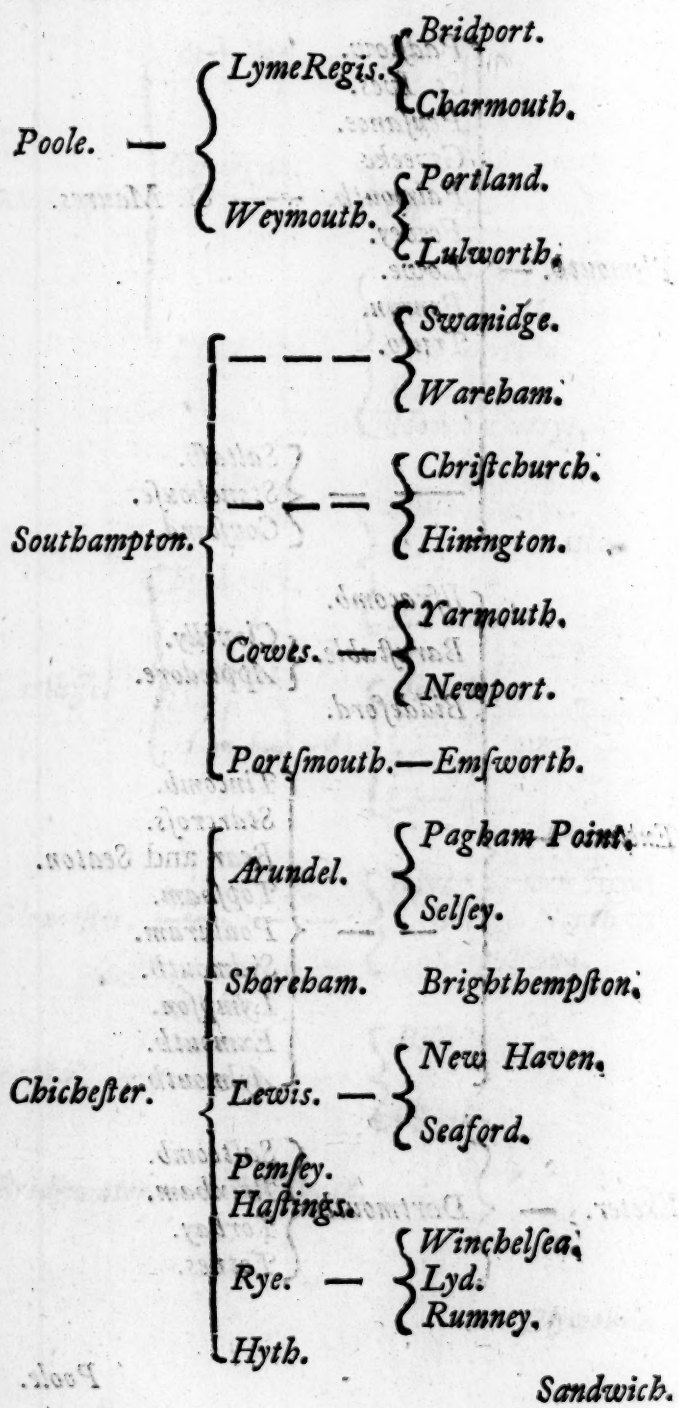
Ports.	Members.	Creeks.
London.	— — —	*Graveſend.*
Ipſwich.	*Malden.* —	*Leigh.* *Burnham.* *Weſt Merſey.*
	Colcheſter. —	*Eaſt Merſey.* *Brickley.* *Wivenhoe.*
	Harwich. —	*Maintree.*
	Woodbridge.	
Yarmouth.	*Aldborough.*	*Orford.* *Dunwick.*
	Southwold.	*Walderſwich.*
	— — —	*Leoſtoffe.*
	Blackney and *Cley.*	
Lynn Regis.	*Wells cum Burnham.*	
	Wiſbech.	*Hitcham.* *Croſs Keys.*
		Boſton.

Ports.	Members.	Creeks.
Boston.	— — —	*Spalding.* *Fosdick.* *Wainfleet.* *Numby Chapel.* *Thetlethorp.* *Salt-fleet.*
Hull.	— *Grimsby*	*Gainthorp.*
	Bridlington.	
	Scarborough.	
Newcastle upon Tyne.	*Whitby.*	
	Stockton.	*Middleborough.*
	Hartlepool.	
	Sunderland.	
	Shields.	
	— —	*Seaton delaval.* *Blith nooke.*
Berwick.	— —	*Aylemouth.* *Warnewater.* *Holy Island.* *East Marches*, containing the Coast of *Northumberland*, bordering on *Scotland.*
Carlisle.	— —	*West Marches*, containing the Coast of *Cumberland*, bordering on *Scotland.*
	Whitehaven.	*Workington.* *Ravinglas.* *Milnthorpe.*
		Chester.

Ports.	Members.	Creeks.
	Lancaſter.	*Pyle of Fowdery.*
		Graunge.
	Poulton.	*Wyrewater.*
		Preſton and *Ribble Water.*
	Liverpool.	*Saukey* Bridge.
		Fradſham.
		South Shore of the River of *Merſey* to the Red Stones.
Cheſter.	— —	*Hilbree.*
		Dawpool.
		Neſton.
		Burtonhead.
		Baghill.
		Moſtin.
	Aberconway.	
	Beaumaris.	— *Amlogh.*
	Caernarvon.	— *Barmouth.*
	Conway.	
	Holyhead.	
	Pulhelly.	

Ports.	Members.	Creeks.
Milford.	*Aberdovy.*	— *Aberuſtah.*
	Cardigan.	*Newport.*
		Fiſcard.
	Pembroke.	*Haverford Weſt.*
		Tenby.
		Caermarthen.
		Lanelthy.
		North Burrys.
Cardiffe.	*Swanzey.*	*South Burrys.*
		Neath or Briton-Ferry.
		Newton.
	— — —	*Aberthaw.*
		Penrath.
		Newport.
		Chepſtow.
Glouceſter.	— — —	River *Severn* from *Bridge-North* to *King-Road.*
Briſtol.	— — —	*Pill.*
		Uphils.
Bridgwater.	— *Minhead.*	
		Plymouth.


Ports.
Members.
Creeks.
Padstow.
St. Ives.
Pensance.
Gweeke.
Falmouth.
St. Maures.
Fowey.
Plymouth.
Lowe.
Penryn.
Truro,
Saltash.
Stonehouse.
Cousland.
Ilfracomb.
Barnstable.
Clovelly.
Appledore.
Biddeford.
Tincomb.
Starcross.
Bear and Seaton.
Topsham.
Exeter.
Pouldram.
Sydmouth.
Lympson.
Exmouth.
Aylmouth.
Saltcomb.
Brixham.
Exeter.
Dartmouth.
Torbay.
Totnes.
Poole.


Ports.
Members.
Creeks.
Poole.
Lyme Regis.
Bridport.
Charmouth.
Weymouth.
Portland.
Lulworth.
Southampton.
Swanidge.
Wareham.
Christchurch.
Hinington.
Cowes.
Yarmouth.
Newport.
Portsmouth.
Emsworth.
Chichester.
Arundel.
Pagham Point.
Selsey.
Shoreham.
Brighthempston.
Lewis.
New Haven.
Seaford.
Pemsey.
Hastings.
Rye.
Winchelsea.
Lyd.
Rumney.
Hyth.
Sandwich.

Ports.	Members.	Creeks.
Sandwich.	*Dover.*	
	— —	*Rumſgate.*
		Marget.
		Whitſtable.
	Deal.	
	Feverſham.	
	Milton.	
	Rocheſter.	*Quinborough.*

Note, All the Ports and Havens in *England* are *infra Corpus Comit.* and that the Court of Admiralty cannot hold Juriſdiction of any thing done in them. *Holland*'s Caſe, Earl of *Exeter*, 30 *H.* 6. And becauſe he held Plea in the Admiralty of a thing done *infra Portum de Hull*, Damages were recovered againſt him two thouſand Pounds. *Godbolt* 260, 261.

X. In regard that the Port of *London* is of great Concern in relation to the Cuſtoms, the Extent and Limits of the ſame Port is by the *Exchequer* ſettled, which is declared to extend and be accounted, from the Promontory or Point called *North-Foreland*, in the Iſle of *Thanet*, and from thence *Northward* in a ſuppoſed Line, to the oppoſite *Promontory* or Point called the *Naſe*, beyond the *Gun-fleet* upon the Coaſt of *Eſſex*, and continued Weſtward through the River of *Thames*, and the ſeveral *Ad Portus inſtaurationem, quia publicæ utilitatis gratiâ fit, omnes ſubditi loci conferre operas debent, lib.* 7. *C. de oper. publ. Portus intuitu flumi-nis quo ambitur, & vectigalis quod ex*

navium ſtatione penditur, eſt publicus & hodie Regalibus accenſitur, §. 2. *Inſt. de rer. dio. l.* 4. §. *D. eod. c. un. quæ ſunt Regal.*

ſeveral Channels, Streams and Rivers falling into it, to *London-bridge*, ſave the uſual and known Right, Liberty and Privilege to the Ports of *Sandwich* and *Ipſwich*, and either of them, and the known Members thereof, and of the Cuſtomers, Comptrollers, Searchers, and other Deputies, and within the ſaid Ports of *Sandwich* and *Ipſwich*, and the ſeveral Creeks, Harbours and Havens, to them or either of them reſpectively belonging within the Counties of *Kent* or *Eſſex*.

XI. And in regard, that when Ships did come up to the Port of *London*, there uſed to be very great Frauds committed by a promiſcuous kind of ſhipping and landing of Goods and Merchandizes at ſeveral blind or unknown Wharfs and Keys, by reaſon of which his Majeſty was often defeated of his Cuſtoms, it was provided, that a Commiſſion might iſſue forth out of the *Exchequer* to aſcertain all ſuch Wharfs, Keys, or other Places, as his Majeſty, by virtue of ſuch Commiſſion, ſhould appoint, in purſuance of which his Majeſty hath been pleaſed to allow to be lawful Keys, Wharfs, and other Places, for the lading or landing of Goods.

Brewer's Key.
Cheſter's Key.
Galley Key.
Wool Dock.
* *Cuſtom-houſe Key.*

* The Stone Stairs on the Weſt-ſide thereof are declared not to be a Place for Shipping or Landing of Goods.

Porter's

Porter's Key.
Bear Key.
† *Sabb's Dock.*
} † Excluding the Stairs there, which are declared no lawful Place for Shipping or Landing of Goods and Merchandize.

Wiggon's Key.
Young's Key.
Ralph's Key.
* *Dice Key.*
} * The Stairs there declared unlawful for Shipping or Landing of Goods or Merchandize.

Smart's Key.
† *Somer's Key.*
} † The Stairs there declared no lawful Place for Shipping and Landing of Goods and Merchandizes.

Lyon Key.
Butolph Wharf.
Hamon's Key.
* *Gaunt's Key.*
} * The Stairs on the East declared unlawful for Shipping or Landing of any Goods, &c.

Cock's Key.
} One other Place betwixt *Cock's Key* and *Fresh Wharf*, called Part of *Fresh Wharf*, the Stairs are declared to be unlawful for Shipping or Landing of any Goods, &c.

Fresh Wharf.

Billingsgate.
} To be a common open Place for the landing or bringing in of Fish, Salt, Victuals, or Fuel of all sorts, and all Native Materials for

Billingſgate. for Building, and for Fruit (all manner of Grocery excepted) and for carrying out of the ſame, and for no other Wares or Merchandize.

Bridge Houſe in Southwark. Is only allowed for landing of any kind of Corn for the City of *London*, and not upon any private or particular Perſon's Account.

XII. It may be lawful for any Perſon to ſhip or lade into any Ship or Veſſel on the River of *Thames* bound over Seas, Horſes, Coals, Beer, ordinary Stones for Building: Fiſh taken by any of his Majeſty's Subjects, Corn or Grain, the Duties being paid, and Cocquets and other lawful Warrant duly paſſed for the ſame.

So likewiſe Deal-boards, Balks, and all ſorts of Maſts and Great Timber may be unſhipt and laid on Land at any Place between *Limehouſe* and *Weſtminſter*, the Owner firſt paying or compounding for the Cuſtoms, and declaring at what Place they will land them before he unſhips them, and upon Licence had, and in the Preſence of an Officer they may unlade them; otherwiſe they incur a Forfeiture.

CHAP.

CHAP. XV.

Proviſions and Allowances made, notwithſtanding the ſeveral Clauſes in the Acts for the Cuſtoms.

I. Cuſtom *to be paid for no more than is landed; and when Bulk ſhall be broken.*

II. *Of Goods Imported and Exported, what of the Cuſtoms ſhall be repaid back, and by whom; and of the things requiſite in the ſame.*

III. *Of Agreement or Contracts made, or to be made, for the importing and exporting by way of Compoſition, ratified.*

IV. *What Allowances to be made to the Exporters of Wines.*

V. *Of Exporting of* Spaniſh *Wool; where the ſame may be done.*

VI. *Of Currans Exported, what Allowances ſhall be made, and to whom, as well to Denizens as Foreigners.*

VII. *Goods imported not finding Market after a Year; Wine exported when diſcharged of Cuſtom.*

VIII. *What Allowances are to be made for Leakage.*

IX. *What ſhall be accounted Leakage.*

X. *Wines proving unmerchantable, what Allowances to be made.*

XI. Tobacco's *receiving Detriment or Damage in the Importation, what Allowances to be made.*

XII. *Strangers paying double Subſidy, where they ſhall pay double Cuſtom.*

XIII. *Of Times and Places lawful to unlade, and Officers Duties then attendant to be preſent.*

XIV. York, Newcaſtle, *and* Hull *Men were Cuſtom free, and for what Goods.*

XV. Exeter *and other* Weſtern *Men, what free Subſidies ſhall be allowed in.*

XVI. *Woollen, whether new or old, what Allowances ſhall be made in Cuſtom or Subſidy.*

XVII. *Allowances of five in the Hundred for all other Goods.*

XVIII. *The Customers and other Officers Duties in reference to attend their several Duties in the Customs.*

XIX. *Of Officers their Duties, and the Punishment where made on Complaint.*

XX. *The several Duties of* London, *how preserved.*

XXI. *The like for other Cities for those Duties granted or taken for publick good Uses.*

XXII. *Where Ships may be visited, and the Officers Duty relating to the same.*

XXIII. *Timber to be rated, and in what manner must pay.*

XXIV. *Prevention in Extortion of Customers and Officers, and on what Pains and Penalties.*

XXV. *Where Fees for Cocquets and Certificates shall be paid all together, and where he shall detain his own Cocquet till the Vessel has broke Ground.*

XXVI. *Where the Officers and Customers shall allow and make good to the Merchants the* Algier *Duty and all other Allowances, and no other Imposition or Duty required by the Book of Rates, shall be required to be paid.*

XXVII. *If Goods shall happen to be taken by Enemies or Pyrates, or wrecked, and what Allowances shall be paid.*

XXVIII. *Ships of War and other privileged Vessels subject to search.*

XXIX. *Of Allowances to be made, and of Shipping out lesser Quantities than are contained in the Certificate, what Operation the same hath.*

Vide Cap. 14. Whatarelawful Places of landing.

EVERY Merchant shall have free Liberty to break Bulk in any Port allowed by Law, and to pay Custom and Subsidy for no more than he shall enter and land; provided that the Master or Purser of every such Ship shall first make Declaration, upon Oath, before any two principal Officers of the Port of the true Contents of his Ship's lading, and shall likewise after declare upon his Oath, before

fore the *Cuſtomer*, *Collector*, *Comptroller*, *Surveyor*, or any two of them, at the next Port of this Kingdom, where his Ship ſhall arrive, the Quantity and Quality of the Goods landed at the other Port where Bulk was firſt broken, and to whom they did belong.

A Merchant brought eighty Tun of Bay-Salt by Sea to a Port in *England*, and out of that Ship ſold twenty Tun, and diſcharged the ſame into another Ship then riding at the ſame *Port*, but the twenty Tun were never actually put on Shore, and for the reſt, being ſixty Tuns, the Maſter agreed for the *Cuſtoms*, and put them on Land; and although that that twenty Tun was always Water-born, and never were put on Shore, yet adjudged they ought to pay; the Reaſon was, for the diſcharging them out of the Ship amounts as much as to the laying them on Land, the ſame being done in Port; for otherwiſe the King would merely be defrauded. But if a Ship is carried in by Storm, and to preſerve the Veſſel part is landed before the Duty paid, yet this will not ſubject the ſame to a Forfeiture.

Cok. 12. part *fol.* 17, 18.

Plowden 9. *Fogaſſa's* Caſe.

II. All Foreign Goods and Merchandizes (except Wines, Currans, and wrought Silks) firſt imported, ſhall be again exported by any *Engliſh* Merchant within twelve Months, and ſuch Merchant or Merchants as ſhall export any ſuch Foreign Goods or Merchandizes (except as before is excepted) ſhall have Allowance, and be repaid by the Officer which received the ſame, the one Moiety of the Subſidy which was paid at the firſt Importation of ſuch *Goods* or Merchandizes, or any Part thereof, ſo as due Proof be firſt made by Certificate from the Officers of the due

Entry, and Payment of the Cuſtom and Subſidy of all ſuch Foreign Goods and Merchandizes inwards, with the Oath of the Merchants importing the ſame, affirming the Truth thereof, and the Name of his Majeſty's Searchers, or Under-ſearcher in the Port of *London*, and of the Searcher of any other the Out-Ports, teſtifying the ſhipping thereof to be exported; after all which duly performed in manner before expreſſed, the Moiety of the Subſidy firſt paid inwards, ſhall without any Delay or Reward be repaid unto ſuch Merchant or Merchants who do export ſuch Goods and Merchandizes, within one Month after Demand thereof, as alſo the whole additional Duty of *Silk*, *Linen* and *Tobacco*, as before is directed.

Lutw. 215. 221. 14 *H.* 7. If the Officer ſhall refuſe to pay, (admitting there was no Relief had by way of Complaint) whether the Merchant Exporter may not bring an Action againſt him upon the Debt created in Law, as he that hath a Tally may do *.

* *Hobart* 270. Rolls Abridg. 599. III. And if there be any Agreement now in force, which was formerly made by the late Commiſſioners of the Cuſtoms and Subſidies, with the Merchants Strangers or their Factors, or ſhall hereafter be made by any Commiſſioners or Farmers of the Cuſtoms and Subſidies, or any other Power, (except by Conſent of Parliament) with any Merchant or Merchants Strangers or Factors for any Foreign Goods and Merchandizes, to be brought into the Port of *London*, or any other Port or Haven of this Kingdom of *England*, or Principality of *Wales*, and to be exported again by way of Compoſition; all other Merchants, being his Majeſty's Subjects, ſhall be admitted

admitted into the ſame Compoſition, and not be excluded from any other Privilege whatſoever granted to the Stranger by any private Agreement or Compoſition, under the ſame Condition, and with the ſame Reſtriction, as ſhall be made with the Merchant Stranger.

IV. Every Merchant, as well *Engliſh* as Strangers, that ſhall ſhip and export any kind of Wines, which formerly have paid all the Duties of Tunnage inwards, ſhall have paid and allowed unto them all the Duties of Tunnage paid inward, except to the *Engliſhmen* 20 *s. per* Tun, and the Stranger 25 *s. per* Tun; upon due Proof of the due Entry and Payment of Tunnage inwards, and of the Shipping thereof to be exported to be made as above.

V. If any Merchant, Denizen or Stranger, ſhall export any *Spaniſh* or Foreign *Wool*, he ſhall have Liberty ſo to do, with this further Condition, that ſuch *Spaniſh*, or other Foreign *Wools* whatſoever, be not exported in any other Ship or Veſſel whatſoever, with intent to be arrived beyond the Seas out of the Kingdom of *England* and Dominion of *Wales*, than only in *Engliſh* Shipping, upon Pain of Confiſcation. 12 *Car.* 2. *c.* 32. 14 *Car.* 2. *c.* 18.

VI. Every Merchant, as well *Engliſh* as Stranger, which ſhall ſhip or export any Currans which formerly were duly entered, and paid the Subſidy and Cuſtom inwards, ſhall have allowed and repaid unto them reſpectively all the Cuſtom and Subſidy paid inwards for the ſame, except 1 *s.* 6 *d.* for every hundred Weight to the *Engliſh*, and 1 *s.* 8 *d.* and one Halfpenny for every hundred Weight to the Stranger, upon due Proof of the due Entry and Payment of the Cuſtom and Subſidy

ſidy thereof inwards, and of the ſhipping thereof to be exported, to be made as in the ſecond Article.

VII. If any Merchant having duly paid all Duties inwards for Foreign Goods, and in regard of bad Sale ſhall be enforced to keep the ſame, or any Part thereof in his Hands, after the Space of a Year ſhall be elapſed; in this caſe he or any other Perſon is to be permitted to ſhip the ſame out for Parts beyond the Seas if they think fit, without Payment for any Subſidy for the ſame outwards, upon due Proof that the ſame was duly entered, and Subſidy paid inward.

VIII. Every Merchant bringing in any Sort of Wines into this Kingdom by way of Merchandize, and ſhall make due Entries of the ſame in the Cuſtom-houſe, ſhall be allowed 12 *per Cent.* for Leakage.

IX. Every Hogſhead of Wine which ſhall be run out, and not full ſeven Inches, ſhall be accounted for outs, and the Merchant to pay no Subſidy for the ſame.

Boyce verſ. Cole ſen. & Cole jun. Hill. 27 Car. 2. in B. R.

And by ſome its conceived, that no Freight ſhall be paid for the ſame, but the Merchant may fling them up to the Maſter for Freight; but that ſhould ſeem hard, for *non conſtat* any Fault in the Maſter, but the ſame may be in the Caſks, or in the ill ſtowing (the Maſter by Cuſtom having no Charge of the Stowing of Wines, eſpecially *French*, but the ſame belongs to certain Officers beyond Seas, from whence they are imported) beſides the *Goods*, be they empty or full, take up Tunnage in his Ship; and ſhould all the Wines on ſhipboard have the ſame Misfortune, it would ſeem hard; however, it is pity Opinion in this Caſe ſhould amount to a laudable Cuſtom.

X. If

X. If any Wines ſhall prove corrupt and unmerchantable, and fit for nothing but to diſtil into hot Waters, or to make Vinegar, then every Owner of ſuch Wines ſhall be abated in the Subſidy, according to ſuch his Damages in thoſe Wines, by the Diſcretion of the Collectors of the Cuſtoms, and one of the principal Officers.

XI. If any *Tobacco* or other *Goods* or *Merchandize* brought into this Kingdom ſhall receive any Damage by ſalt Water or otherwiſe, ſo that the Owner thereof ſhall be prejudiced in the Sale of ſuch Goods, the principal Officers of the Cuſtom-houſe, or any two of them, whereof the Collector for the Time being to be one, ſhall have Power to chuſe two indifferent Merchants experienced in the Values of ſuch Goods, who, upon viſiting of ſuch Goods, ſhall certify and declare upon their Corporal Oaths firſt adminiſtered by the ſaid Officers, what Damage ſuch Goods have received, and are leſſened in their true Value; and according to ſuch Damage in relation to the Rates ſet on them in the Book of Values, the Officers are to make a proportionable Abatement unto the Merchant or Owner of the Subſidy due for the ſame.

There is a Book at the *Cuſtom-houſe*, in which there is a general Value ſet on all Goods; among which Tobacco is there valued.

By an Act 12 *Ann. c.* 8. §. 8. There is to be no Allowance for damaged Tobacco; but the Merchant refuſing to pay the Duties, ſuch Tobacco is to be burnt.

XII. All Merchants Strangers, who according to the Rates and Values ſet in the general Book of Values and Rates, and do pay double Subſidy for Lead, Tin, Woollen Cloth, ſhall alſo pay double Cuſtom for Native Manufactures of *Wool*; and the ſaid Strangers are to pay for all other Goods, as well

Nor can ſuch Merchants Strangers land their Goods before they have agreed for the Cuſtoms, notwithſtanding

Charta Mercatoria.

well inwards as outwards, rated to pay the Subſidy of Poundage, three Pence in the Pound, or any other Duty payable by *Charta Mercatoria*, beſides the Subſidy.

XIII. That the Merchants trading into the Port of *London*, have free Liberty to lade and unlade their Goods at any lawful Keys and Places of ſhipping and lading Goods between the *Tower* of *London* and *London-Bridge*, and between Sun-riſing and Sun-ſetting, from the tenth Day of *September* to the tenth Day of *March*; and between the Hour of ſix of the Clock in the Morning, and ſix of the Clock in the Evening, from the tenth Day of *March* to the tenth of *September*, giving Notice thereof to the reſpective Officers appointed to attend the lading and unlading of Goods; and ſuch Officer as ſhall refuſe upon due calling to be preſent, he ſhall forfeit for every Default 5 *l.* the one Moiety to the King, the other to the Party aggrieved, he ſueing for the ſame.

XIV. The Merchants of *York*, *Kingſton upon Hull*, and *Newcaſtle upon Tyne*, and the Members thereof, ſhall be allowed free of Cuſtom and Subſidy two of the Northern Cloths and Kerſies in ten to be ſhipped in thoſe Ports in the Name of *Double Wrappers*, as formerly has been there allowed them.

XV. The Merchants of *Exeter*, and other Weſtern Parts, ſhall be allowed free of Subſidies one *Perpetana* in Ten for a *Wrapper*, and three *Devons Dozens* in twenty for *Wrappers*, the ſame to be ſhipped out of the Ports of *Exeter*, *Plymouth*, *Dartmouth*, *Barnſtable*, *Lyme Regis*, or the Members thereof.

Note, That all theſe ſeveral Allowances

XVI. All Merchants tranſporting any Sort of *Woollen*, whether new or old Drapery, as alſo

alſo all *Bayes* and *Cottons*, ſhall be allowed one in ten for a Wrapper, free of Cuſtom and Subſidy.

are not by Act of *Parliament*, but purely his Majeſty's gracious and voluntary Gift and Benignity towards the encouraging the Merchants and Trade.

XVII. Every Merchant ſhall be allowed upon all other Goods and Merchandize appointed to pay to any the Subſidy of Poundage, according to the Rate in the Book of Values, to be imported five in the hundred of all the ſaid Subſidies of Poundage ſo appointed to be paid.

XVIII. The Officers who ſit above in the Cuſtom-houſe of the Port of *London*, ſhall attend the Service of their ſeveral Places from Nine to Twelve in the Forenoon, and one Officer, or one able Clerk, ſhall attend with the Book in the Afternoon, during ſuch Time as the Officers are appointed to wait at the Water-ſide, for the better deciding of all Controverſies that may happen concerning Merchants Warrants, all other the Officers of the Out-Ports ſhall attend every Day in the Cuſtom-houſe of every reſpective Port for Diſpatch of Merchants and Ships, between the Hours of Nine and Twelve, and Two and Four in the Afternoon.

XIX. Every Merchant, making an Entry of Goods either inwards or outwards, ſhall be diſpatched in ſuch Order as he cometh; and if any Officer or his Clerk, ſhall, either for Favour or Reward, put any Merchant or his Servant duly attending and making his Entries as aforeſaid, to draw any other Reward or Gratuity from him than is limited in the Act of *Tunnage* and *Poundage*, and the general Book of Values, if the Maſter Officer be found faulty herein, he ſhall, upon Complaint to the chief Officers of the Cuſtom-houſe, be ſtrictly admoniſhed of his Duty;

but if the Clerk be found faulty therein, he ſhall upon Complaint to the ſaid chief Officers be preſently diſcharged of his Service, and not permitted to ſit any more in the Cuſtom-houſe.

XX. The Lord Mayor, Commonalty, and Citizens of the City of *London*, their Officers, or Deputies for and touching Offices of *Package*, *Scavage*, *Baleage* or *Portage* of any Goods or Merçhandize of Aliens, or their Sons born within this Kingdom, or Unfreemen, imported or exported into or out of the City of *London*, or the Liberties or Ports thereof, unto or from the Parts beyond the Seas, for or concerning the receiving or taking of any Fee or Rates heretofore uſually taken, for or in reſpect of the ſaid Offices, or any of them, might and may receive and take the ſame; any Thing in the Act of Tunnage and Poundage, or any other Act to the contrary notwithſtanding.

XXI. All ancient Duties heretofore lawfully taken by any City or Town Corporate, their Farmers, Deputies or Officers, under the Name of Town-Cuſtom, or the like, for the Maintenance of Bridges, Keys, Harbours, Wharfs, or the like, ſhall and may be received and enjoyed as formerly; any Thing in the ſaid Act, or any other Act to the contrary in any wiſe *non obſtante*.

XXII. The Under-Searcher, or other Officers of *Graveſend*, have Power to viſit and ſearch any Ship outward bound, but ſhall not, without juſt and reaſonable Cauſe, detain any Ship under Colour of ſearching the Goods therein laden, above three Tides after her Arrival at *Graveſend*, under Pain of Loſs of their Office, and rendering Damage to the Merchant

Merchant and Owner of the Ship; and the Searcher or Officer of the Cuſtom-houſe in any of the Out-Ports, having Power to ſearch and viſit any Ship outward bound, ſhall not without juſt and reaſonable Cauſe detain ſuch Ship, under Colour of ſearching the Goods therein laden, above one Tide after the ſaid Ship is fully laden and ready to ſet ſail, under Pain of Loſs of the Office of ſuch Offender, and rendering Damage to the Merchant and Owner of the Ship.

XXIII. All Timber in Balks, which ſhall be of eight Inches ſquare and upwards, that ſhall be imported or brought from any Part beyond the Seas into the Realm of *England*, Dominion of *Wales*, Port and Town of *Berwick*, or any of them, ſhall be rated according to the Meaſure of Timber, the Foot ſquare 3 *d.* for the Value thereof, and according to that Rate ſhall pay for Subſidy 12 *d.* in the Pound according to Poundage; and all under eight Inches ſquare, and above five Inches ſquare, ſhall pay for Subſidy, according to the Rates mentioned in the Book of Rates for middle Balks, and all of five Inches ſquare, or under, ſhall pay according to the Rate of ſmall Balks.

XXIV. For avoiding of all Oppreſſions by any the Officers of the Cuſtoms in any Port of this Kingdom, in exacting unreaſonable Fees from the Merchant, by reaſon of any Entries, or otherwiſe touching the ſhipping or unſhipping of any Goods, Wares, or Merchandize, it is ordered that no Officer, Clerk, or other, belonging to any Cuſtom-houſe whatſoever, ſhall exact, require, or receive any other or greater Fees of any Merchant or other whatſoever, than ſuch as are or ſhall be

be eſtabliſhed by the Commons in Parliament aſſembled: And if any Officer or other offend contrary to this *Order*, he ſhall forfeit his Office and Place, and be for ever incapable of any Office in the Cuſtom-houſe.

XXV. All Fees appointed to be paid unto the *Cuſtomer*, *Comptroller*, *Surveyor*, or *Surveyor General* in the Port of *London*, for any Cocquets or Certificate outwards, ſhall be paid altogether in one Sum, to that *Officer* from whom the Merchant is to have his Cocquet or Certificate above in the Cuſtom-houſe; and after the Merchant hath duly paid his Cuſtom and Subſidy, and other Duties above in the Cuſtom-houſe, as is appointed above by the Book of Rates, he is to be Maſter of and keep his own Cocquet or Certificate, until he ſhall ſhip out his Goods ſo entered, when as he is to deliver the ſame to the *Head Searcher*, or his Majeſty's *Under Searcher* in the Port of *London* or other *Ports*, together with the Mark and Number of his Goods.

XXVI. The *Officers* of the Cuſtom-houſe for the Time being, ſhall allow and make unto all Perſons all ſuch Monies, as are or ſhall be due unto them for the half Subſidy, and alſo the *Algier* Duty of Foreign Goods formerly exported now due and unpaid.

The Duties and Sums of Money appointed to be paid by the Act of Tunnage and Poundage paſſed this Parliament, and by the Book of Rates therein mentioned, and no other, ſhall be paid to his Majeſty's *Officers* during the Continuance of the ſaid Act upon Goods imported and exported, any Law, Statute or Uſage to the contrary notwithſtanding. Neverthelefs the Duty of *Prizage* and *Butlerage*, and the Duty of 12 *d.* of every Chaldron of Sea-

Sea-coal exported from *Newcaſtle upon Tyne*, to any other Port or Ports of this Realm ſhall be continued.

XXVII. If any Merchant Denizen born ſhall happen to have his Goods and Merchandize taken by Enemies or Pyrates at Sea, or periſhed in any Ship or Ships, the Duties being either paid or agreed for, upon due Proof thereof, may ſhip out of the ſame Port the like Quantity as ſhall amount unto the Cuſtom, without paying of any thing for the ſame. 27 *Ed.* 3. *cap.* 13. 12 *Car.* 2. *cap.* 4.

If the Importer ſhall pay ready Money, he ſhall be allowed 10 per Cent. *for ſo much as he ſhall pay down.*

XXVIII. Ships of War may be entered and ſearched for prohibited and unaccuſtomed Goods, and to bring them aſhore to the King's Warehouſes, and the Commiſſioners or Head Officers may leave aboard Officers to look after them, that none be unladen or embezzled, on Pain of Forfeiture of 100 *l.* And if Goods are concealed on Ship-board after ſuch time as the Ship is cleared, to forfeit 100 *l.* and then any with a Writ of Aſſiſtance out of the Court of *Exchequer*, to go in the Day-time to any Place, and enter and ſeize. 14 *Car.* 2. *c.* 11.

Goods conveyed ſecretly into Ships, and carried away without paying the Subſidy and Duties, the Owners and Proprietors forfeit the double Value, except Coals, which only forfeit the double Cuſtom and Duty.

XXIX. There are Allowances to be given Merchants for defective and damaged Goods of 5 *per Cent.* on all Goods imported, and 12 *per Cent.* on all Wines to be allowed upon Debentures; but if they ſhall ſhip out leſs than is in the Certificate, then the Goods therein mentioned, or the Value thereof, ſhall be

be forfeited, and the Owner or Merchant ſhall loſe the Benefit of receiving back any of the Subſidy: And Goods ſhipped out are not to be landed again in *England*, on Pain of Forfeiture of thoſe Goods.

All Goods coming out of, or carried into *Scotland*, by Land, ſhall paſs through *Berwick* or *Carliſle*, and pay Cuſtom as others, on Pain of Forfeiture.

And although that by this Act there are many Allowances to be made, eſpecially to Merchants Denizens, yet the Parliament have ever been ſo careful as to bound the ſame, that is, it ſhall be to ſuch who traffick in Ships; (which are indeed the Bulwark of this Iſle) and therefore if ſuch Merchandize ſhall be tranſported out in any Galley or Carack, they are obliged to pay all manner of Cuſtoms, and all manner of Subſidies, as any Alien; but in regard that Herring and Fiſh are, and have been accounted, one of the principal Commodities, and generally finds a Vent or Market in thoſe Kingdoms and Countries that uſually employ ſuch ſort of Veſſels, thoſe Commodities may be tranſported in them as well as Ship from any Port or Harbour within this Realm, without paying any Subſidy or Poundage for the ſame; but then ſuch Fiſh muſt be taken by the Natives of the Kingdom, and tranſported by them, otherwiſe to pay as Aliens.

And whereas all manner of *Woollen* Cloths, as well white as coloured, unrowed, unbarded, and unſhorn, and not fully dreſſed, are prohibited by Law to be tranſported, His Majeſty was graciouſly pleaſed to grant * unto *Frances* Counteſs of *Portland*, as well for her Alliance in Blood, as alſo for the many Croſſes and

* *Per* Letters Patents, bearing Date 24th of *Feb.* 27 *Car.* 2.

and Calamities which ſhe hath ſuffered by the Loſs and Death of her neareſt Relations in his Majeſty's and his Royal Father's Service, full Power for one and thirty Years, to licence the tranſporting of ſuch Goods *non obſtante* ſuch prohibitory Laws; the which is now put in Execution by Agreement, and the Compoſition with her Deputies at the Cuſtom-houſe.

CHAP. XVI.

Of the Right of Paſſage: Of impoſing on the Perſons and Goods of Strangers for Paſſage through the Seas.

I. *Of the Right of harmleſs* Utility *excepted tacitly in the primitive Dominion of Things.*
II. *Where Paſſage ought to be open, and where the ſame might be implicitly provided for in the firſt Inſtitution of Property, and under what Cautions.*
III. *Of the ſame Right in reference to Goods and Merchandize.*
IV. *If Paſſage admitted, whether* Tribute *or* Toll *may be impoſed.*
V. *Where Impoſition may lawfully be laid, and for what Cauſes; and of the King's Prerogative in that Point.*
VI. *Whether lawful to ſtay in others Country, and to build for a Seaſon.*

I. HAVING in the foregoing three Chapters obſerved ſomewhat of *Cuſtoms* and *Impoſitions* laid *de facto* within the Realm, and that by Acts of Parliament, or the Conſent of the three Eſtates, it may not ſeem amiſs to inquire, what Impoſition the King of his Prerogative may impoſe on Strangers

Strangers and their Goods paſſing through his Territories and Seas; and in that to inquire of the ſame in reference to Perſons and Goods.

Beſides the Right of Neceſſity, which ſeems to be excepted in the firſt Inſtitution of Dominion, there is another Relique of old Communion, namely, the Right of harmleſs Utility: *For why ſhould not one* (ſaith *Cicero*) *when without his own Detriment, he may communicate to another in thoſe things that are profitable to the Receiver, and to the Giver not chargeable?* Therefore *Seneca* ſaith, *It cannot be called a Benefit to give leave to another to light his Fire by yours.* We read in *Plutarch*, it is not lawful to ſpoil our Victuals when we have more than enough, nor to ſtop, nor hide a Fountain, when we have drank our Fill; nor to aboliſh the Way-marks, either by Sea or Land, which have been uſeful to us: So a River as a River is proper to that *Prince*, or that *Lord*, or that *People*, within whoſe Dominion or Royalty it runs, and they may make a Mill on it, (unleſs it be common, as a High-way) and may take what Fiſh the River yields, but the ſame River as a running Water remained common as to drinking or drawing of it, notwithſtanding as to the Fiſhing, and the like, it may be peculiar.

Cic. de Offic. 1.

Sen. de Benef. 4. *Sympſ.* 7.

Leg. quædam D. de rer. diviſ.

II. Again, Lands, Rivers, nay, if any part of the Sea be come into the Dominion or Property of any People, it ought to be open to thoſe that have need of Paſſage for juſt Cauſes, namely, being expelled by Force out of their own Country they ſeek void Places, or becauſe they deſire Commerce with remote Nations: The Reaſon here is the ſame which hath been mentioned * elſewhere, becauſe Dominion

Bald. 3. *conſ.* 293.

* *Lib.* 1. *c.* 1. §. 3, & 4.

Dominion might be introduced with a Reception of ſuch Uſe † which profits theſe, and hurts not thoſe; and therefore the Authors of Dominion are to be ſuppoſed willing rather to have it ſo, than that ſuch a Reſtriction, which perhaps in the end may deſtroy Society: However this hath its *quantum*; for though harmleſs Paſſage may be excepted in the firſt Inſtitution of Dominion, yet that is to be underſtood when Leave is granted: And though Fear of the Multitude, which is to paſs, cannot take away that Prince his Right through whoſe Territories or Seas they go; yet it follows as naturally, that in the Inſtitution of ſuch Liberty that Prince or People may provide, and if they have any probable, or any reaſonable Cauſe, interdict the Paſſage, till Security or Hoſtages are pledged for their peaceable Paſſage, nay, without declaring their Reaſon, may interdict them abſolutely any manner of Paſſage, if there be any other way to paſs in Safety; and therefore at this Day, by the Laws of *England* *, the King may interdict any Nation or People whatſoever to paſs through his Seas, without Leave firſt obtained to that Purpoſe, and may viſit all Ships, be they of War or Traffick, that ſhall occur or be in the ſame. However, Paſſage is and muſt be requeſted; but in lieu of that, the ſtriking of the Flag, and lowering the Top-ſail, is in Token of that Right due to his Majeſty in the *Britiſh* Seas. * *Vide lib.* 1. *cap.* 4. and Selden's *Mare Clauſum.*

† *Serv. ad* 7. *Æn. littuſq; rogamus innocuum, cujus vindicatio,* ait. *nulli poſſit nocere.*

Plutarch relates, that *Cymon* going to aid the *Lacedemonians*, led his Army thorough *Corinth*, but being reprehended by the *Corinthians* for not aſking Leave of the City: *Nam et qui fores alienas pulſat, non intrat niſi domini permiſſu: at vos*, inquit, *Clioneorum & Magarenſium fores non pulſaſtis ſed perfregiſtis conſentes omnia patere debere plus valentibus.*

III. Nor is Paſſage only due to Perſons, but to Merchandize alſo; for no Man hath Right † wilfully to obſtruct the way of Commerce to any Nation with any other that is remote, becauſe the Permiſſion of Trade is for

† That is, by the Laws of Nature, but the Laws of Nations and thoſe of Countries may.

for the Intereſt of human Society, and is not diſcommodious to any one, and to that Purpoſe *Philo* ſpeaks: *On the Sea all Ships of Burden ſafely paſs according to that Right of Commerce which is between all Nations ariſing from the Deſire of natural Society, while they ſupply one another mutually with what the one wanteth, and the other can ſpare; for Envy hath never invaded either the whole World, or the greater parts thereof.* And *Plutarch* ſpeaking thus of the Sea: *This Element hath made our Life ſociable and perfect, that otherwiſe would be wild and without Correſpondence; it ſupplies our Wants with mutual Aids, and by Exchange of Things needful, it procures Fellowſhip and Friendſhip.* And the Wiſdom of God is highly to be admired, who hath not granted all things to every Land, but hath diſtributed his Gifts to ſeveral Countries, that Men having need of one another, might maintain Society for their common Good; therefore hath he endowed Man with Knowledge and Underſtanding to invent and build Ships, to govern and guide them by thoſe Lamps of Heaven, and other Inſtruments of his Divine Wiſdom, enabling thereby the Merchant to convey to all what any Place affords: According to that of the Poet.

In Legat. Caium.

Quomodo autem ſatis digne quis explicet facilitatem ad mutua Commercia nobis datam? Ne enim itineris longitudo impedimentum aliorum ad alios commeantibus adferret breviorum viam, maris ſcilicet, ubiq; terrarum diſpoſuit Deus, ad mundum tanquam domum communiter inhabitantes crebro invicem inviſerimus; et apud ſe nata quiſque alteri communicans viciſſim, commode acciperet res apud illum abundantes; ac ſic exiguam tenens terræ partem, ita tanquam ſi teneret univerſam, frueretur eis quæ orbis ſunt bonis. Licet itaq; tunc tanquam in communi menſa convivarum unicuiq; ea quæ ſibi oppoſita dare alteri longius accumbenti, ac contra quæ apud ipſum ſunt accipere nanu tantum extenta.

What Nature any Land denied,
By Navigation is ſupplied.

But as the Sea is free and open for Traders, yet nevertheleſs the Paſſengers are ſubject to ſuch

ſuch Reſtrictions, Laws and Ordinances, as thoſe Sovereign Princes ſhall make of Force in thoſe Places, where they have an Acceſſion of Property and Sovereignty.

IV. But admitting that ſuch free Paſſage may be granted, as above, whether Tribute may be impoſed by him that rules the Land, upon Merchandize paſſing by Land or by River, or by part of the Sea, which may be called an Acceſſion of the Land, (that is, the Place through which they paſs, is as much under the abſolute Juriſdiction of the Prince, as the very Land itſelf:) certainly whatſoever Burdens have no Relation to the Merchandize, no Equity ſuffers the ſame to be impoſed on the ſame; neither can Poll-money put on the Inhabitants to ſuſtain the Charge of the Commonwealth, be exacted of Paſſengers. *Vide Strabo. lib. 8. & lib. 16.*

V. Nevertheleſs, if either to ſecure the Paſſengers Goods and Veſſels from Pirates and others, or for the erecting of Beacons, Light-houſes, and other Sea-marks, and ſuch like, * there indeed ſome Compenſation may be laid upon the Commodities or Ships paſſing through, ſo that the Meaſure of the Cauſe be not exceeded; or as my Lord *Coke* obſerves in the Caſe of the Halage-money, † it be reaſonable; for upon that depends the Juſtneſs of Tributes and Toll: And upon thoſe Reaſons the *Venetian* in the *Adriatick*, the King of *Denmark* in the *Baltick* Sea, does demand the ſame; and the King of *England* may do the like in the *Chambers* of his Empire, and that by his Prerogative; for the ſame is not ſo much *compulſory* to any to pay, but to them that will take *Benefit* of ſuch Accommodation.

* 13 *H.* 4. *fol.* 14.

† *Lib.* 5. *fol.* 63. Caſe of the Chamberlain of *London*.

Vide the Plea of the *Venetian* Lawyers at the End of Mr. *Selden's Mare Clauſum*.

Les Comons praiont que lou le Roy ſes Progenitors de long temps haut eſtre Seigneur de Mer, & ore eſt venus que le Roy Seigneur des Coſts de ambideur partes vel Mer, & par ceo praiont le Roy de impoſer un impoſition ſur Eſtrangers paſſant purmy la Mer.

Vereg. lib. 1. de Jure Fiſci, c. 1. num. 27.

Strabo relates, that the *Corinthians*, even from the moſt antient of Times, received Tribute of the Commodities, which, to avoid the compaſſing of *Malta*, were carried by Land from Sea to Sea. So the *Romans* received a Price for the Paſſage of the *Rhyne*. But this Right of impoſing on Ships and Goods paſſing through ſome Territories, is found cruel, eſpecially when they muſt paſs through the Territories of a powerful and fierce People, then it is heavy to the Merchant to compound, for it's often done on hard and grievous Terms.

VI. Again, to ſtay ſome time for Health Sake, or for any other juſt Cauſe, ought alſo to be permitted to Paſſengers, for this too is among the innoxious Utility; wherefore *Illoneus* in *Virgil*, * when the *Trojans* were prohibited to ſtay on the Shore of *Africk*, is bold to invoke the Gods as Judges: And the Complaint of the *Megarenſes* againſt the *Athenians*, who drove them from their Havens † *againſt common Right*, was approved by the *Greeks*, ſo that the *Lacedæmonians* eſteemed no Cauſe to create a War more juſt: Hence it is, that at this Day it is held by all Lawyers, that it is lawful (either in caſes of Wreck, or any other Exigency upon ſuch landing) for Paſſengers to build a Cottage or Hut on the Shore to ſhelter them for a Seaſon, though

* *Servius ad eum loc.*

† *Plutarch Pericle.*

we

we grant the Shore to be poſſeſſed by the Inhabitants: 'Tis true, *Pomponius* does think there ought to be the Prætor's Decree; but certainly that extends only to thoſe Paſſengers, that, being expulſed their own Countries, deſire perpetual Habitation, and a Subjection to the Government of the Place where they deſire to dwell.

Occupantis enim eſt poſſeſſio littoris unde oſtenduntur crudeles qui etiam à communibus prohibeant.

The END *of the* SECOND BOOK.

BOOK III.

CHAP. I.

Of Freedom, Bondage, Slavery, Exile, and Abjuration.

I. *Of Freedom by the Law of Nature, and of Bondage, Slavery, or Captivity introduced by the Law of Nations.*
II. *Of the Actions that ſubject Man to Bondage.*
III. *Of the Dominion over Slaves, Bond-men, and Captives.*
IV. *Of the Cauſe, or Reaſon of ſuch Dominion.*
V. *That this Right or Dominion was not a Law univerſal.*
VI. *Of Bondage or Slavery, where diſcontinued by the Chriſtians and Mahometans.*
VII. *Of a Servitude at this Day, ſtanding with the Laws of a Chriſtian Commonwealth.*
VIII. *Of Manumiſſion and Freedom by the* Hebrew *and* Roman *Law, and by the Laws of* England.
IX. *Of disfranchiſing, the ſeveral ways.*
X. *Of Abjuration and Exile; and what Operation it hath.*
XI. *Of Freedom in Cities and Corporations, in reference to Merchants, Traders, and Foreigners.*

L. libert. §. 1. *D. de ſtatu hominum. Fiunt etiam ſervi liberi homines captivate de jure gentium.* Bracton, *l.* 1. *c.* 6.

I. IN the primitive State of *Nature*, no Men were Servants; yet it is not repugnant to natural Juſtice, that by the Fact of Man, that is, by *Covenant* or *Tranſgeſſion*, Servitude ſhould come in; therefore Servitude is brought in by the *Laws of Nations*.

II. Hence it is, that thoſe that will yield up their Perſons, or *promiſe* Servitude, are accounted

accounted *Slaves*; ſo likewiſe all that are *taken in publick War*, and brought within the Guards of their Conquerors; nor is Tranſgreſſion neceſſary, but the Lot of all is equal after the War is begun, even thoſe whoſe ill Fortune ſubjected them to be deprehended within the Enemies Bounds; nor are they Servants only themſelves, but all their Poſterity for ever.

Littleton §. 175. *l. Poſtlim.* §. 1. *D. de Captiv.*

III. The Privileges of this *Right* or *Dominion* are infinite; *ſince there is no Suffering which may not be impoſed on ſuch, nor Work which may not every way be extorted from them:* So that even the Cruelty of Maſters became almoſt unpuniſhed, till the Municipal Laws of Countries ſet Bounds to their Rigour and Power.

L. & ſervorum §. 1. *D. de ſtatu hominum. Apud omnes peræq; gentes, ait* Caius *animadvertere poſſumus dominis in ſervos vitæ neceſq; poteſtatem fuiſſe. Co. Inſtit. fol.* 116. *b. l.* 1. *D. de his qui ſui ſunt juris.*

Nor are the Perſons become theirs only that have the Power of them, but alſo all that they have; for ſuch unhappy Perſons *can have nothing of their own.*

Hence it was, that that excellent Law in favour of ſuch was introduced by the *Romans*, called *Lex Cornelia*, which was, when a Captive, *intra præſidia hoſtium*, died in his Captivity; if he had made a Will, before his being taken Captive, yet ſuch a Captive ſhould in favour of ſuch Will, and for the upholding of the ſame, be feigned to be dead, and *in punctο temporis*, immediately before ſuch his being taken Captive; and ſo by that legal Fiction of Death, his Will became firm and valid, as if he had really died without ever being taken by the Enemy. So likewiſe if one had been made a Slave, yet if he had returned out of his Captivity, that for the

Leg. Cornel. ff. de Teſtam. & Leg. Cornel. ff. de vulg. ſubſtit.

In jure Poſtliminii leg. rector. & l. in bello §. 1. *& l. bon. ff. d. Capt. &* §. 4. *D. quibus mod. jus patr. ſolvit.*

the Preſervation of his Right and Propriety, he was feigned as if he had never been abſent, and was immediately redintegrated into his priſtine State and Condition.

And *Forteſcue* conceives, it began *ab homine, & pro vita introducta eſt ſervitus, E. ſed libertas à Deo homines indita naturæ, quare ipſa ab homine ſublata ſemper redire gliſcit, ut faciat omne quo libertate naturali privatur, cap.* 42.

IV. Now all theſe Privileges and Immunities were introduced by the *Laws of Nations*, for no other Reaſon, but that their Captors, tempted by ſo many Immunities, *might willingly abſtain from that cruel Rigour of ſlaying their Priſoners.*

Hence it is, that the Captor's Dominion is extended to the Children; for ſhould ſuch *uſe their higheſt Right they would not be born*; but Children that are born before that Calamity, and were never taken Priſoners, are freed from that unhappy State.

V. Though this Dominion or Right was generally acquired in moſt Nations, yet was not the ſame an *univerſal Law*; for amongſt the *Jews*, Refuge was granted to Servants who fell into that Calamity by no Fault of their own. And the State of *Chriſtendom* at this Day is apparent, That Priſoners taken in War do not become perfect Slaves, as of old, but only remain in the Cuſtody of the Captor till *Ranſoms are paid*, whoſe Valuations are generally at the *Pleaſure* of the Conqueror; yet Perſons of eminent Quality, as *Generals*, and the like, ſuch Perſons, * if taken by a common Soldier, yet he has no Advantage by the ſame; for ſuch a Captive is become Priſoner immediately to that Prince or State under whom the Captor ſerved: But if it be the Lot of an *inferior Soldier* to become a Priſoner of War, he is then become abſolutely the Captors to diſpoſe of; but he wanting

* Article of War, *Anno* 1673, for his Majeſty's Forces, *Artic.* 24.

ing those Neceſſaries in the Field for himſelf, which he ought to provide for his Priſoner, commonly waves that Intereſt, and generally yields him up as a Priſoner of War, to be diſpoſed of by that Prince or State under whom he ſerves.

Bart. in l. nam. & ſeru. D. de rebus geſtis.

VI. Slavery in *Chriſtendom* is now become obſolete; and in theſe latter Ages the Minds of Princes and States having as it were univerſally agreed to eſteem the Words, *Slaves*, *Bondman*, or *Villain*, barbarous, and not to be uſed; and that ſuch as are taken in War between Chriſtian Princes, ſhould not become Servants, *nor be ſold, or forced to work, or otherwiſe ſubjected to ſuch ſervile Things*, but remain till an Exchange of Priſoners happen, or a Ranſom paid, as afore: Nay, the very *Turks* and *Mahometans* at this Day generally obſerve this among themſelves, not to make Slaves of thoſe of the *Mahometan Religion*, though taken in War; and that which is moſt to be admired, a Chriſtian fallen into that miſerable State, renouncing his Religion, and becoming a *Mahometan*, immediately upon his Circumciſion obtains his Freedom with a Recompence. The Cruelty of thoſe Infidels to thoſe unhappy Perſons, together with the Reward of renouncing, hath given Cauſe to many a brave Perſon to become *Renegado*; the which being conſidered by the Parliament of *England*, they made a † Proviſion for ſuch miſerable Perſons as ſhould be taken by *Turkiſh* and *Mooriſh Pirates*.

In the Wars of the *French* with the *Spaniards* in *Italy*, a Horſeman was ranſomed for the 4th of his yearly Pay. *Vide Mariana l.* 27. *c.* 18. And in the laſt *Belgick* War, the *Engliſh* diſmiſt all the *Flemings* that were taken in War, as they did the like with

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thoſe of *England*. *Anno* 1671. 2. *Quam non ſit ardua virtus ſervitium fugiſſe manu*, it is none of the hardeſt Virtues to embrace Death to avoid Slavery.

† 16 *Car.* 1. *cap.* 24. it's expired. Mr. *Thomas Betton*, a *Turkey* Merchant, left a very conſiderable Sum of Money to the Ironmongers Company.

Company, to be laid out in the Purchaſe of an Eſtate, the Produce of which is appropriated to the Redemption of *Britiſh* Slaves.

Salk. 666, 667. *See* Pref. to Laws concerning Maſters and Servants.

v. Stale Trials.

VII. Though *Slavery* and *Bondage* are now become diſcontinued in moſt Parts of *Chriſtendom*, and to that Degree, that for the Perſon of a Man, be he *Moor* or other *Indian*, a Trover is not maintainable by the Laws of *England*, yet there may be a Servitude which may amount to a Labour or Suffering *equal* to that of Captives; the which may be juſtifiable; for Men, either through Poverty, and the like, may oblige themſelves by Contract, for Maintenance to a Servitude that's perpetual, *i. e.* for Life, and ſo for Years; but at this Day there is no Contract of the Anceſtor can oblige his Poſterity to an hereditary Service; nor can ſuch as except thoſe Servants, exerciſe the antient Right or Dominion over them, no nor ſo much as to uſe an extraordinary Rigour, without ſubjecting themſelves to the Law. If an Eye or a Tooth had been ſtruck out injuriouſly, by the *Hebrew* Law Freedom was immediately due; and by the *Greeks*, if Servants had been ill treated, it was lawful for them to demand *a Sale of themſelves to others*. At *Rome* the Statues became Sanctuaries for Servants to implore the Help of the Governors againſt Rigour, Hunger, or any other intolerable Injury inflicted by their Maſters; and even in *London* at this Day in *Servitude*, (amongſt the many Cauſes, as not Inrollment of the Indentures, not inſtructing in the Art, Want of Neceſſaries, *infra ætatem* 14, &c.) Cruelty, Hunger, Rigour, immoderate Correction, and the like, are Cauſes ſufficient, on a *Monſtrance* or Petion to the Chamberlain, to diſſolve the Contract, though under Hand and Seal, and to decree

The *Engliſh* Merchants and others for the *Virginia* and other Plantations, do hire Servants for a Term of Years.

Exod. 21. 26. 27.

Vide the Statute of 5 *Eliz.* c. 4. which hath provided the like Remedy in other Places; and ſee Laws concerning Maſters and Servants.

decree all or part of the Dowry, or Sum given (if any) to the Servant; and if Cruelty hath been in the Caſe, to expoſe the Maſter to anſwer Damage to the Servant.

VIII. *Ulpianus* obſerves, after that by the Laws of Nations Servitude came in, then followed the Benefit of Manumiſſion. By the *Hebrew Law*, after the Expiration of the Time agreed on, the Servant was to be manumitted, and that not without Gifts, like *London*'s Freedom; by the Cuſtom of which the Maſter is always at the Charge of Cloathing, and diſcharging the Chamberlain's Fees. By the *Roman Law*, every Son was in ſuch Subjection to his Father, that before he could be releaſed of this Subjection, and made free, he ſhould by an imaginary Sale be ſold three Times by his natural Father to another Man, who was called by the Lawyers *Pater Fiduciarius*, that is, a Father in Truſt, and then be bought again by his natural Father, and ſo manumitted by him, and then he became free: This Form of ſetting free was by them called *Emancipatio*, *Freedora*.

Deut. 15. 13.

The *Ruſſians* having ſeized on the Country of *Illyria*, and made it their own by Conqueſt, their Victory pleaſed them ſo highly, that thereupon they called themſelves by a new Name, *Slaves*, which is in their Language, *Glorious*; but in after time, (that warmer Climate having thawed their Northern Hardineſs, and not ripened their Wits) when they were conquered, and made Servants to their Neighbours, the *Italians*, which kept many of them in Bondage, began to call all their Bond-men Slaves. Sir *Walter Raleigh*, Vol. I. p. 282. Edit. 1736.

That *Roman Darling* was to be obtained three Ways:

Vide leg. 12. *Tabul. Sigonius de jure Roman.*

1. By Birth; * both, or at leaſt one of their Parents being free, and ſuch were called *Cives Originarii*.

* *Juſtin Inſtit. lib.* 1. *tit. de Ingeniis, v. Franc. Silo in Catilin. art.* 4.

2. By *Gift* and *Cooptation*; when the Freedom was beſtowed on any Stranger or Nation,

tion, and then they were termed *Civitati Donati:* And ſo we read, that *Cæſar* took in whole Nations into the Freedom.

Laſtly, by *Manumiſſion*; which was thus: When as the Servant was preſented by his Maſter before the *Conſul* or *Prætor*, the Maſter laying his Hand upon his Servant's Head, uſed this Form of Words, *Hunc liberum eſſe volo*; and with that turning his Servant round, and giving him a Cuff on the Ear, he did *emittere ſervum è manu:* The *Prætor* laying then a certain Wand or Rod, called *Vindicta*, upon the Servant's Head, replied in this manner, *Dico eum liberum eſſe more Queritum*; then the *Lictor* or *Serjeant* taking the Wand, did ſtrike the Servant on the Head, and with his Hand ſtruck him on the Face, and gave him a Puſh on the Back; and after this he was regiſtered for a *Freeman*. This being performed, the Servant having his Head ſhaven purpoſely at that Time, received a Cap as a Token of Liberty.

Goodwyn *Antiq. Rom.* 4. 33, 34.

Tertullian obſerves, that at this Time of their Manumiſſion, the Servants received from their Maſters a white Garment, a Gold Ring, and a new Name added to their former.

Tertullian. de reſur. Carn.

By the *Laws* of *England*, every Subject born within the King's Dominions, is a *Freeman* of this Realm, as appears by the *Grand Charter*, *cap.* 14, yea, though he be a *Bond-ſlave* to a Subject: † But a *Stranger* born is no *Freeman*, till the King have made him a *Denizen*, in whoſe Power alone, without the Help of any other, one may be made free.

Blackſt.

Magna Charta, cap. 14.

† *Vide poſtea*, §. 9

To be a Freeman of the Realm, the Place of *Birth*, is held more conſiderable than the Quality of the *Perſon*; yet by the Opinion of *Huſſey* Chief Juſtice, and in *Calvin*'s Caſe of the

1 *Rich.* 3. *fol.* 4.

the *Poſt-Nati*, it is held for Law, that if *Ambaſſadors* of this Realm have Children born in *France*, or elſewhere, the Father and Mother being natural born Subjects, the Children are free of the Realm of *England*: But if either the Father or Mother of ſuch Children were an *Alien*, then are not thoſe Children free.

But the Law is conceived to be otherwiſe at this Day. The Statute *de Natis ultra mare*, 25 *E.* 3. declares the Iſſue born of an *Engliſh* Man upon an *Engliſh* Woman, ſhall be a *Denizen*; for upon the Conſtruction of this Statute it has been adjudged more than once, that if an *Engliſh* Man marry a *Foreigner*, and has Iſſue by her born beyond Seas, the Iſſue is a *Natural born Subject*.

Bacon's Caſe, *Croke* Charles 601. *Jenkin's Cent.* 1, 2, 3.

If Baron and Feme *Engliſh* go beyond Sea without Licence, or tarry there after the Time limited by the Licence, and have Iſſue, that the Iſſue is an *Alien*, and not inheritable, contrary to the Opinion of *Huſſey*, 1 *R.* 3. 4. *Hide* againſt *Hill. Cro. Eliz.* 3. 4 *Leon.* 110. *Cro. Charles* 602. *Steven's* Caſe, cited in *Bacon's* Caſe.

Iſſue born beyond Sea.

An *Engliſh* Merchant had Iſſue by a *Poliſh* Woman in *Poland*, and deviſes his Copyhold Land to the Uſe of his Children; *per Crook*, the Children are not Aliens. 1. Becauſe the Father went with Licence, being a Merchant. 2. In our Law, *Partus non ſequitur Ventrem.* 3. Blood is between him and his Iſſue. Several of the Judges held, that the Words in the *Stat.* 25 *Ed.* 3. *cap. De natis ultra mare*, whoſe Fathers or Mothers be or ſhall be of the Allegiance of our King, ſhall be taken diſtributive, Father or Mother, and not copulative, *Littleton's Rep.* 23, 26, 27.

Engliſh Merchant marries an *Alien*, and has Iſſue, he is not an *Alien*. Curiam.

IX. *Diſfranchiſing* by the *Romans*, called *Capitis diminutio*, was three-fold, *Maxima*, *Media*,

Media, and *Minima*; the leaſt Degree was, when the *Cenſors* pulled a Man from a higher Tribe down to a lower and leſs honourable; or when by any *Cenſure* they diſabled a Man from ſuffraging or giving his Voice in the publick Aſſemblies; ſuch as were thus in the laſt manner puniſhed, were termed *Ærarii*, and *in ærarios veluti, quia omnia alia jura Civium Romanorum præterquam tributi & æris conferendi amiſerunt.* *Gellius* relates, that *P. Scipio Naſica* and *M. Pompilius*, being *Cenſors*, taking a View of the *Roman* Knights, obſerved one of them to be mounted on a lean ſtarvling Horſe, himſelf being exceeding fat; whereupon they demanded the Reaſon, why his Horſe was ſo lean, himſelf being ſo fat? His Anſwer was, *Quoniam ego, inquit, me curo; equum vero ſervus.*

a Gellius Noct. Attic. l. 3. c. 17.

Blackſt. First granted 17 *Joh. Reg.* revived 9 *H.* 3. and ſince confirmed above thirty times.

By the antient Laws of *England*, and by the *Great Charter*, no *Freeman* ſhall be taken or impriſoned, but by the lawful Judgment of his Peers (that is, by Jury, Peers for Peers, ordinary Juries for others who are their Peers) or by the Law of the Land; which is always underſtood by due Proceſs of the Law, and not the Law of the Land generally; for otherwiſe that would comprehend Bond-men, (whom we call Villains) who are excluded by the Word *Liber*; for ſuch Bond-man might be impriſoned at the Pleaſure of his Lord, but a Free-man neither could nor can, without a juſt Cauſe; nor does the Privilege extend to private Actions, or Suits between Subject and Subject, but even between the Sovereign and the Subject. Hence it is, that if a Peer of the Realm be arraigned at the Suit of the King for a Murder, he ſhall be

be tried by his * Peers, that is, by the Nobles. But if he be appealed of Murder upon the Proſecution of a Subject, his Trial ſhall be by an ordinary Jury of twelve Freeholders: And as the *Grand Charter* did, and does protect the Perſons of Freemen, ſo likewiſe their Freehold; by the ſame *Charter* it is declared, that the King, or his Miniſters, ſhall out no Man of his Freehold without reaſonable Judgment; and ſo it was ruled upon a Petition in Parliament, ſetting forth, that a Writ under the Privy Seal, went to the Guardian of the Great Seal, to cauſe Lands to be ſeized into the King's Hands, and that thereupon a Writ iſſued forth to the Eſcheator to ſeize, againſt the Form of the *Great Charter*; upon Debate of which, the Party had Judgment to be reſtored: The greateſt and moſt explanatory Act, which ſucceeded in Point of Confirmation, was that of *Edward* the Third; the Words are, That no Man, of what Eſtate or Condition ſoever he be, ſhall be put out of the Lands and Tenements, nor taken or impriſoned, nor diſinherited, nor put to Death, without he be brought to anſwer by due Proceſs of the Law, that is, by the Common Law.

* The Lord *Morly* and *Monteagle's* Caſe for the ſuppoſed Murder of one *Haſtings*, 15 *Car.* 2. 10 *E.* 4. 6. 33 *Hen.* 8. *Bro.* Title, Trials.

8 *Ed.* 3. *Rot. Parl. m.* 7.

28 *E.* 3. *c.* 3.

2. *Diminutio media*, was an Exilement out of the City, without the Loſs of ones Freedom; the Words of the Judgment or Sentence were, *Tibi aquæ & igni interdico.*

3. *Diminutio maxima*, was the Loſs both of the City and the Freedom, and by his Judgment or Sentence was obliged and limited to one peculiar Country, all other Places in general being forbidden him.

There was a fourth kind of Baniſhment, diſfranchiſing, called *Relegatio*; which was the

the Exilement only for a Seaſon, as that of *Ovid*'s.

Ovid. de Triſt. lib. 2.

Adde quod edictum quamvis immite minaxque,
Attamen in pœnæ nomine lene fuit:
Quippe relegatus, non exul dicor in illo.

The Laws of *England* in this Matter have ſome Reſembance with thoſe of the *Romans*; for *Bracton* obſerves four Diſtinctions:

1. *Specialis, hoc eſt, interdictio talis Provinciæ, Civitatis, Burgi aut Villæ.*

2. *Generalis, Interdictio totius* Regni, *& aliquando eſt.*

3. *Temporaria, pro* duobus, tribus, quatuor, *aut* pluribus annis, *aut*, &c.——

4. *Perpetua, pro* termino vitæ, *& exilium eſt aliquando ex arbitrio Principis, ſicut in exiliando Duces* Hertfordiæ *&* Norfolciæ, *per Regem* Richardum *Secundum, & aliquando per Judicium Terræ, ut ſit in caſu* Piers *de* Gaveſton, *& etiam in caſu* Hugonis *de le* Spencer *Junioris, qui ambo fuerunt exilit' per Judicium in* Parliamento. So likewiſe was that of the Baniſhment of the Earl of *Clarendon*, who died beyond Sea*.

In *London* the ſame is done, by exhibiting an Information in the Name of the Common Serjeant, in the Mayor's Court there againſt any Citizen that ſhall juſtly deſerve ſo great a Diſhonour.

* 19 *Car.* 2. *c.* 10.

X. *Abjuration* was alſo a legal Exile, by the Judgment of *the Common Law*, as alſo by the Statute Law; and in the Statute of *Weſtm. the ſecond, cap.* 35. he that raviſhes a Ward, and cannot render the Ward unmarried, or the Value of his Marriage, muſt abjure the Realm; and this is a *general* Exile. And by the Statute made 31 *Ed.* 1. Butchers are to be abjured the Town, if they offend the fourth Time, in ſelling meaſled Fleſh; and this is a *ſpecial* Baniſhment.

Mr. *Selden* obſerves, that in the Time of K. *Hen.* the Firſt, and of other Kings, both before and after him, that if any Man, accuſed of a Capital Crime done at Sea, being publickly

A Man

called five Times by the Voice of the Cryer, after ſo many ſeveral Days aſſigned, did not make his Appearance in the Court of Admiralty, he was baniſhed out of *England*; *& de mere appurtenant au Roy d' Angleterre*, for forty Years, more or leſs, according to his Offence. *Mar. Clauſ. fol.* 12.

A Man exiled does forfeit theſe things.

1. He loſeth thereby the Freedom and Liberty of the *Nation* out of which he is exiled.

2. He forfeits his Freedom in the *Borough* or *City* where he was free; for he which forfeits the Freedom of the whole Realm, forfeits his Freedom in every Part.

3. The Law accounts him as one *dead*; for his Heir may enter, and ſo may his Wife enter into her own Lands, and may ſue an Action as a *Feme ſole*. 34 *E.* 1. 1 *H.* 4. 3 *Bulſt.* 188. 1 *Inſt.* 132, 133. 15 *E.* 3. *Fitz. Petition pl.* 2.

4. He ſhall forfeit thoſe Lands which he ſhall purchaſe in the Realm, *during his Baniſhment*; for he, during his Baniſhment, is as much diſabled to purchaſe as an Alien; for *fit alienigena* by his Baniſhment, and he is obſerved to be in a worſe Condition than an Alien; for he is marked with *indignatio Principis*. 'Tis true, he cannot forfeit neither Title of Honour, or Knighthood, nor the Lands he had before Exile, unleſs there be ſpecial Sentence or Judgment, as that of the *Spencers* *. *Totle's *Magna Charta. fol.* 50, 51.

If the Father be in exile, this hinders not the Freedom of the Son, for the ſame is not a thing deſcendible; for ſhould it be ſo, then the Baniſhment of the Father would make a Forfeiture of the Freedom; but the Son has this Freedom by his own Birth, as a Purchaſe, and not by the Death of his Father by Deſcent: Like the Caſe where *J. S.* hath many Children, and then he confeſſeth himſelf a Villain to *J. D.* in a Court of *Record*; yet his

his Children formerly born are Freemen, and no Villians; the Reaſon is, becauſe they were free by their own Births; but the Inheritance is inthralled, becauſe it is to come to the Heir by Deſcent.

8 *Co.* 126. Caſe City of *London.*

XI. A Freeman of a City or Borough may be made divers ways, as my Lord *Coke* obſerves.

1. By Service.
2. By Birth, by being the Son of a Freeman.
3. By Purchaſe of Redemption.
4. At *Briſtol* by *Marriage.*

Sir *John Davies* in his *Iriſh* Reports obſerves the ſame for Law. St. *Paul* was born at *Tarſus* in *Cilicia*, which was under the Obedience of the *Romans*, by virtue of which he challenged the Privilege of a *Roman Citizen*; but it was accounted no more than a *National Freedom*; like that of *Calvin*, who claimed the general Freedom of an *Engliſhman*, being born in *Scotland*, but under the Obedience of the King of *England*; but that Challenge made not St. *Paul* free of the private Cuſtoms, Privileges, and Franchiſes of *Rome*, no more than *Calvin*'s Birth made him a free Citizen of *London*, to the particular Cuſtoms of that City.

King *Edward* the Third granted to *John Falcount de Luca*, an Apothecary of the City of *London*, *quod ipſe omnibus libertatibus quas Cives Civitatis prædict' habent in eadem Civitate alibi infra Regnum* Angl' *noſtrum habeat, guadeat & utatur, &c. Rot. Pat.* 32 *E.* 3. in the Tower; yet it was held, that this Grant did not make him a Freeman of the City, for it cannot be attained but by one of thoſe ways. * Caſe of the City of *London*, 8 *Co.* 126.

The King, by his Letters Patents, cannot make one a Freeman of *London*, * yet he may thereby make him a Freeman of his Kingdom.

If one born in a City, of Parents that are not free, the Child hereby is no Citizen by Birth;

Birth; and if one be born of free Parents out of the Place of Privileges, as *London*, &c. he yet is a Freeman by Birth; yet in the *Charter* granted to *Yarmouth*, the Words were, *Conceſſimus Burgenſibus de Magna* Yarmutha *de villa prædict. oriundis*, that they ſhould have ſuch Liberties: So that ſpecial Words may alter the Caſe.

London had many Royal Franchiſes granted them from time to time, and were often by former Kings ſucceſſively confirmed, nor wanted they a Share when the great Charter was granted, to have their antient Liberties ſecured; nor were the ſucceeded Princes ſlack in their Royal Grants and Confirmations; but eſpecially *Richard* II. who in Parliament granted and confirmed to them all their ancient Cuſtoms and Liberties, with this Clauſe, *Licet uſi non fuerint vel abuſi fuerint*, and notwithſtanding any Statute to the contrary; amongſt the Number of their many Privileges, the Freedom of the ſame was accounted of no ſmall Importance, ſince in divers Parliaments it was very much aimed at, and endeavoured to be impaired; but at laſt they obtained a moſt gracious and Royal Confirmation in Parliament of their ancient Liberties, amongſt which it is declared, that no Merchant, being a Stranger to the Liberty of the ſaid City, ſhould ſell any Commodities within the Liberty of the ſaid City, to other Merchant-Strangers; nor that any ſuch Merchant-Stranger ſhould buy of any other Merchant-Stranger ſuch Merchandize within the Liberty of the ſaid City, without Forfeiture thereof, ſaving that any Perſon, Lord, Knight, &c. may buy within the Liberties of any Merchant-Stranger Merchandizes in groſs for their own

Confirmed by *Magna Charta, cap.* 9. *Rot. Parl.*

7 *R. num.* 37.

9 *E.* 2. *cap.* 2. 29 *E.* 3. *cap.* 2. 27 *E.* 3. *c.* 11. 7 *H.* 4. *cap.* 1.

9 *H.* 4. this Act is not printed.

own Uſe, ſo that they do not ſell them again to buy any other. And as this City by Cuſtom may preclude any Perſon, not being free of the ſame, to ſell in ſuch manner upon ſuch Pain; (a) ſo any other City, which are Boroughs or Cities by Preſcription within this Realm, may have the like Cuſtom, and the Goods ſold or bought by ſuch, may be ſubjected to Forfeiture; but the ſame cannot be good by Charter or Grant. 8 *Co.* 125. a.

(a) *Vide Salk.* 204. where 'tis held, that ſuch Cuſtom is an Injury to the Party, and a Prejudice to the Publick. *Lucas*'s Rep. 146. 173. *J. Bagg*'s Caſe. 11 *Co.* 93. b.

A compleat Freeman is ſuch a one as hath challenged his Freedom, and taken the Freeman's Oath, and is admitted into the Society and Fellowſhip of the Freemen, Citizens, and Burgeſſes; otherwiſe, he hath but a bare Right to his Freedom.

A Bond to reſtrain a Man from trading in a particular Place, if made upon a reaſonable Conſideration, is good; *ſecus* if it be on no reaſonable Conſideration, or to reſtrain a Man from trading at all.

1 *Peer Williams*'s Reports 181.

CHAP.

CHAP. II.

Of Aliens, as in relation to their Eſtates Real and Perſonal.

I. *Of an Alien his Ability and Diſability in the taking and enjoying of Eſtates Real and Perſonal.*
II. *Of his Capacity in purchaſing, and Diſability to transfer by an hereditary Deſcent.*
III. *Of the Rules of Deſcents, according to the Laws of ſeveral Countries.*
IV. *Of Deſcents, according to the Rules of the Common Law of* England, *lineal and collateral.*
V. *Of Impediments in one that is not the* medius anteceſſor.
VI. *Of Impediments in one that is the* medius anteceſſor *lineal and collateral.*
VII. *Of the Statute of* Natis ultra Mare, *and Iſſues born beyond Seas.*
VIII. *The Lord* Coke's *Opinion, that if an Alien has Iſſue two Sons Denizens, the one purchaſes Land, and dies, the other cannot inherit them, debated and refuted.*
IX. *Of Foreign Births, which do not create a Diſability.*
X. *Of Aliens not diſabled by Law to bring either real or perſonal Actions.*
XI. *Of Office that muſt entitle the King to an Alien's Eſtate.*
XII. *Of ſome particular Immunities, and other Matters relating to an Alien.*

I. AN *Alien* is one born in a ſtrange Country under the Obedience of a *ſtrange Prince* and *State*, and out of the Legiance of the *King of England*, and can have no real or perſonal Action for, or concerning Lands; and therefore if he purchaſe Lands, Tenements, or Hereditaments, to him and his

7 *Co.* 16. a. *Yelverton* 199.

1 *Inſt.* 2. a, b.

Heirs, albeit he can have no Heir, yet he is of Capacity *to take* a Fee-ſimple, but not *to hold*; for the King upon *Office* found ſhall have it by his *Prerogative*.

Dyer 283. So it is if he purchaſe Lands and dies, the Law doth caſt the Freehold and Inheritance upon the *King*.

Lease of house

1 *Inſt.* 2. b. But if he purchaſe or take a Leaſe for Years of a Houſe or a Warehouſe, which is for the accommodating him as a *Merchant-Stranger*, whoſe Prince or State is in League with ours, there he may hold the ſame, for that the ſame is incident to *Commerce*.

1 *Inſt.* 2. b. And in that caſe, if he departs and relinquiſhes the Realm, the King ſhall have the ſame; ſo it is, if he be no *Merchant*.

Lands &c

Paſch. 29 *Eliz.* Sir *James Croft*'s Caſe by the Judges. The like Law is, if he takes a Leaſe of Meadows, Lands, Woods or Paſtures, the King ſhall have the ſame; for the Law provides him nothing *but a Habitation to trade and traffick in as a Merchant*.

1 *Ven.* 417. *Colling-wood* and *Pace*. 1 *Sid.* 193. 1 *Lev.* 59. 1 *Keb.* 65, 174, 216, 265, 535, 579, 603, 670, 699, 950. II. Though he may take by Purchaſe by his own *Contract*, that which he cannot retain againſt the King, yet the Law will not enable him by an Act of its own to transfer by hereditary Deſcent (the Alien dying, his Iſſue a *Denizen* born, the Land will not deſcend) or to take by *an Act in Law*; for the Law, *Quæ nihil facit fruſtra*, will not give him an Inheritance or Freehold by an Act in Law, for he cannot keep it.

Therefore the Law will not give him
1. By Deſcent.
2. By Courteſy.
3. By Dower.
4. By Guardianſhip.

And in reſpect of that Incapacity he reſembles a Perſon *Attaint*, but with this Difference; The

The Law looks upon a Perſon *Attaint* as one that it takes notice of, and therefore the eldeſt Son attainted overliving the Father, though he ſhall not take by Deſcent in reſpect of his Diſability, yet he ſhall hinder the Deſcent to the younger. *Vide Inſt.* 8. 2,

But if the eldeſt Son be an *Alien*, the Law takes *no notice of him*, and therefore as he ſhall not take by Deſcent, ſo he ſhall not impede the Deſcent to the younger Brother: As for inſtance, if there be three Brothers, the eldeſt an Alien, the other two naturalized, and the middle Brother purchaſe, and dies without Iſſue, the younger Brother ſhall have the Land. 32 *Ed.* 3. *Cozinage.* *Cro. Jac.* 539. *Dr. & St. Dial.* 1. *c.* 7.

III. Concerning the Rule of Deſcents, we are not to govern ourſelves therein by the general notions of *Love*, or *Proximity of Nature*, but by the *Municipal* Laws of the Country wherein the Queſtion ariſeth; for the various Laws of divers Countries have variouſly diſpoſed the manner of Deſcents, even in the ſame Line and Degree of Proximity: For inſtance, the Father certainly is as near of kin to the Son, as the Son is to the Father, and is nearer in Proximity than a Brother, and therefore ſhall be preferred as next of kin in Adminiſtration to the Son's Eſtate.

According to the *Jews*, for want of Iſſue of the Son, the Father ſucceeds, excluding the Brothers; and that hath been the Uſe and Conſtruction of the *Jewiſh Doctors* upon *Numb.* xxvii. 9. but the Mother was wholly excluded. *Ratcliff's* Caſe. 3 *Coke* 37. Seld. *de ſucceſſionibus apud Hebræos, cap.* 20.

2. According to the Proviſion of the *Greeks* for the Succeſſion or Excluſion of the Father, is left doubtful.

1 *Inſtit.* 10. b. 3. By the *Roman* or *Civil Law*, according to the Eſtimation of the *twelve Tables*, the Father ſucceeded in the Purchaſe of the Son for want of Iſſue of the Son, under the Title *proxim. agnato*, and ſo was the Uſe; but my Lord *Coke* ſuppoſes the contrary.

Tit. 1. *de hæredibus ab inteſtato venientibus* Goodwyn *Antiq; de Teſtamentis, fo.* 233. But taking the whole Inſtitution of *Juſtinian*, the Son dying without Iſſue, his Brothers, Siſters, Father, or Mother, do ſucceed him as well to Land as Goods, in a kind of *Coparcenary*.

Cuſtoms *Normand. c.* deſcheancres. 4. According to the Laws of *Normandy*, (which in ſome Things have a Cognition with our Law) his Brothers are preferred before the Father, (if the Son die iſſueleſs) but his Father before his Uncle.

Lit. §. 3. 5. According to the Laws of *England*, the Sons dying *ſans* Iſſue, or Brothers, or Siſters, the Father cannot ſucceed, but it deſcends to the Uncle.

1 *Inſt.* 10. a, b. IV. There be two Kinds of Deſcent, according to the *Common Laws* of this Realm.

Hales's Hiſt. of the Law, *ch.* 11.

1. *Lineal*, from the Father or Grandfather to Son or Grand-ſon.
2. *Collateral* or *tranſverſed*, as from Brother to Siſter, Uncle to Nephew, and *è converſo:* And both theſe again of two ſorts.
   1. *Immediate*, as in Lineals from Father to Son.
   2. *Mediate*, as in Lineals from Grandfather to Grand-child, where the Father dying in the Life-time of the Grandfather, is the *medium differens* of the Deſcent.

Grotius *de Jure Belli ac Pacis, lib.* 2. *cap.* 7.

Collateral, as in Lineal, from Uncle to Nephew, or *è converſo*.

And this mediate Deſcent, or mediate Anceſtor, though to many Purpoſes it be immediate; for the Father dying in the Life of the

the Grandfather, the Son ſucceeds in point of Deſcent in the Lands immediately to the Grandfather; and in a Writ of *Entry* ſhall be ſuppoſed to be in by the Grandfather, and not in the *poſt & cui*.

This is called a mediate Deſcent, becauſe the Father is the *Medium* through whom the Son derives his Title to the Grandfather.

In immediate Deſcents there can be no Impediment, but what ariſes in the Parties themſelves: For inſtance, the Father ſeized of Lands, the Impediment that hinders the Deſcent muſt be in the Father or Son, as if either of them be Attaint or an Alien.

In mediate Deſcents, a Diſability of being an Alien or Attaint in him that is called the *medius anteceſſor*, will diſable a Perſon to take by Deſcent, though he himſelf have no ſuch Diſability.

In *Lineal* Deſcents, if the Father be Attaint or an Alien, and hath Iſſue a *Denizen* born, and die in the Life-time of the Grandfather, the Grandfather dies ſeized, the Son ſhall not take, but the Land ſhall *eſcheat*.

In *Collateral* Deſcents, *A.* and *B.* Brothers, *A.* is an Alien or Attaint, has Iſſue *C.* a Denizen born, *B.* purchaſes Lands and dies without Iſſue, *C.* ſhall not inherit, becauſe *A.* which was the *medius anteceſſor* or *medium differens*, is uncapable. *Dyer*, 274. *Graye's* Caſe.

V. But in any Deſcents, the Impediment in an Anceſtor that is not *medius anteceſſor*, from whom and to whom, will not impede the Deſcent.

As for inſtance, the Grandfather and Grandmother both Aliens, or Attaint of Treaſon have Iſſue, the Father a *Denizen*, who hath Iſſue the Son a *natural born Subject*, the Father *Courtney's* Caſe. *Com. Pleas Coron. fol.* 141.

ther purchaſes Lands, and dies, the Son ſhall be Heir to the Father, notwithſtanding the Diſability of the Grandfather, (and yet all the Blood which the Father hath is derived from his diſabled Parents) for they are not *medii anteceſſores*, between the Father and the Son, but paramount.

The Law does not hinder, *but that an Alien is of the ſame Degree and Relation of Conſanguinity, as natural born Subjects, or Denizens born*, the Son, the Father and Brother, tho' Aliens; the Son, Father and Brother, our Law takes Notice of, as well as natural born Subjects, and ſo it was adjudged, for he ſhall be preferred in *Adminiſtration*, though an Alien, *as next of kin*.

Crook Car. 8. 9. *Carcon's* Caſe.

But in Caſes of *Inheritance* the Law takes *no Notice of him*, and therefore as he ſhall not take by Deſcent, ſo he ſhall not *impede* the Deſcent to the younger Brother: As for inſtance, *A.* an Alien, *B.* and *C.* naturalized by Act of Parliament, (Brothers) *B.* purchaſes Lands, and dies *ſine prole*, *C.* ſhall inherit, and not *A.*

29 Ed. 3. *tit. Cozenage* 5.

A. an Alien, *B.* and *C.* his Brothers, both naturalized by Act of Parliament, *B.* purchaſes Lands, and dies without Iſſue, the ſame ſhall not come to *A.* nor to his Iſſue, though a Denizen, but ſhall come to *C.* and his Iſſue; the Law taking no *Notice* of *A.* as to *impede* the Succeſſion of *C.* or his Iſſue, though it work a *conſequential Diſability* to bar the Iſſue of *A.* parallel to what the Law calls *Corruption* of Blood, which is a Conſequent of Attainder.

Ramſey's Caſe. 15 *Car.* 2. *in Com. Banc.*

VI. Again, in Lineal Deſcents, if there be a Grandfather a natural born Subject, the Father an Alien, Son natural born Subject, the Father is made a Denizen, he ſhall not inherit

inherit the Grandfather; and if the Father dies in the Life of the Grandfather, the Grand-child, *though born after the Denization*, doth not remove neither the Perſonal nor Conſequential Impediments or Incapacity of the Father.

In *Collateral* Deſcents, the Father a natural born Subject has Iſſue two Sons Aliens, who are both made Denizens, and dies without Iſſue, the other ſhall not inherit him. *Grodfrey* and *Dixon*'s Caſe. *Godbolt*, 275. *Cro. Jac.* 539. 2 *Rolls Rep.* 92. *Vaughan* 285. *Lewinz* 59.

A. an Alien marries an *Engliſh* Woman, who is ſeized of Lands, and has Iſſue, the Father and Mother dies, yet the Iſſue may inherit the Mother, *non obſtante* the Incapacity of the Father being an Alien.

VII. The Statute *de Natis ultra Mare*, declares the Iſſue born of an *Engliſh* Man upon an *Engliſh* Woman ſhall be a Denizen; yet the Conſtruction has been, though an *Engliſh* Merchant marry a Foreigner, and has Iſſue by her born beyond the Seas, *that Iſſue is a natural born Subject.* *De Natis ultra Mare*, 25 *Ed.* 3. *Cro. Car.* 601.

But if an *Engliſh* Woman go beyond the Sea, and there marry an Alien, and have Iſſue beyond the Sea, that Iſſue are Aliens. *Cro. Car.* 601. *Bacon*'s Caſe.

If an *Engliſh* Woman marries an Alien beyond the Seas, and then comes into *England*, and has Iſſue, they are not Aliens, but may inherit. *Prowde*'s Caſe of *Kent*.

VIII. My Lord *Coke*, in his *Commentaries* on *Littleton*, ſeems to be of Opinion, that if an Alien has Iſſue two Sons born in *England*, one dying without Iſſue, the other ſhall not inherit him. But the Law is otherwiſe taken at this Day, as I conceive the Reaſons that have been given, are, *Co. Lit.* 8. 1 *Lev.* 60. 1 *Sid.* 198. 1 *Ven.* 429. *Hard.* 224.

1. Though the Deſcent from one Brother to another Brother be a *collateral Deſcent*, yet it *Per* L. C. J. *Hale* in *Ramſey*'s Caſe.

it is an *immediate Deſcent*, and conſequently if no Diſability or Impediment can be found *in them*, no Impediment in *another Anceſtor* will hinder the Deſcent between them.

That this is an immediate Deſcent, appears,

Firſt, In Point of Pleading, one Brother ſhall derive himſelf as Heir to another, without mentioning any *other Anceſtor*.

Secondly, According to the Computation or *Degrees*, Brother and Brother make but one *Degree*, and the Brother is diſtant from his Brother or Siſter in the *firſt Degree* of *Conſanguinity*, and no more, by the Laws of *England*.

* *Juſt. l.* 9. *tit. de gradibus conſanguinitatis* 38.

According to the *Civil Law* * Brother and Brother make but *one Degree*, for the Brother is in the *ſecond Degree* from the Brother, yet both make but *one Degree*.

† *Decret. Gratiani, cap.* 35. *quæſt.* 5.

According to the *Canon Law*, † *Frater & Frater*, or *Frater & Soror ſunt in primo gradu.*

And therefore the Laws prohibiting Marriage between Kindred in the *fourth Degree*, take Brother and Siſter to be the *firſt Degree* of the four.

Lit. Sect. 20. 31 *Ed.* 3. *Gard.* 116. *Holland*'s Caſe cited by *Littleton.*

The Laws of *England*, in Computation of the Degrees of Conſanguinity, agree with the *Canon Law*, and reckon the Brother and Brother to be the *firſt Degree.*

‖ *Servien* in Comptes, degrées in Line Collat. *Solenk, &c.*

Herewith agree the Cuſtoms of *Normandy*, ‖ which, though in ſome Caſes differ from the Laws of *England*, yet herein, and in divers other Particulars touching Deſcents, they agree.

Brown's Caſe, *Mich.* 1656. *B. R. contra* 5 *E.* 6. Bro. Adminiſtration 47.

Another Evidence to prove, that the Deſcent between Brothers is immediate, is this, (*viz.*) the Deſcent between Brothers differs from all other collateral Deſcents whatſoever, for

for in other Deſcents collateral *the half Blood does inherit*, but in a Deſcent between Brothers *the half Blood does impede the Deſcent*, which argues, that the Deſcent is immediate. which prefers the Brother of the half Blood before the Mother.

The Uncle of the Part of the Father has no more of the Blood of the Mother, than the Brother by the ſecond Venter, the Brother by the ſecond Venter has the immediate Blood of the Father with the Uncle (*viz.* the Father's Brother) has not but only as they meet in the Grandfather; the Brother of the half Blood is nearer of Blood than the Uncle, and therefore ſhall be preferred in *Adminiſtration*.

It is apparent, that if in the Line between Brother and Brother, the Law takes Notice how the Father was the *Medium* thereof, the Brother of the ſecond Venter ſhould rather ſucceed to the other Brother, becauſe he is Heir to the Father; therefore in a Deſcent between Brothers, the Law reſpects only the *immediate Relation of the Brothers as Brothers*, and not in reſpect of the Father, though it is true, the Foundation of their Conſanguinity is in their Father or Mother.

Again, if the Father, in caſe of a Deſcent between Brothers, were ſuch an Anceſtor as the Law looked upon as the *Medium* that derives the Deſcent from the one Brother to the other, then the Attainder of the Father would hinder the Deſcent between the Brothers: But the Attainder of the Father does not hinder the Deſcent between the Brothers; the Reaſon is, becauſe *the Father is not ſuch a Medium* or *Nexus* that is looked upon by the Law, as the Means deriving ſuch a Deſcent between the two Brothers: As for inſtance of three Caſes, two whereof evince the firſt Propoſition, (*viz.*) 1 *Inſt.* 8. a.

That

That although the Deſcent from one Brother to another Brother, though it be a collateral Deſcent, yet is an immediate Deſcent, *and that if no Diſability or Impediment ariſes in them*, no Impediment in another Anceſtor will hinder them.

Dyer, 247. *Gray*'s Caſe. The younger Brother has Iſſue, and is attainted of Treaſon, and dies, the elder Brother has Title to a *Petition of Right*, dies *ſans* Iſſue without a Reſtitution, the younger Brother's Son has loſt that Title; for though the Title were in the Anceſtor that was not attaint, yet his Father that is the *Medium*, whereby he muſt convey that Title was attaint, and ſo the Deſcent was obſtructed.

Com. placit. Coron. fol. 241. *Henry Courtney*'s Caſe. *Henry Courtney* had Iſſue *Edward*, and was attainted of Treaſon, and died, *Edward* purchaſed Lands, and died without Iſſue, the Siſters and Heirs of *Henry* were diſabled to inherit *Edward*, yet neither *Edward* nor his Aunts were attainted, or their Blood corrupted; yet becauſe *Henry* was the *Medium through whom* the Aunts muſt derive their Pedigree and Conſanguinity to *Edward*, who was attainted, the Deſcent was obſtructed till a Reſtitution in Blood.

But if the Grandfather of *Edward* had been attainted, and not *Henry*, this would not have hindered the Deſcent from *Edward* to the Aunts, becauſe that *Attainder had been paramount* to that Conſanguinity which was between *Henry* and his Siſter, and that is proved by this third Caſe.

Mich. 40, 41. *Eliz.* ruled in the *Exchequer* in the Caſe of *Hobby*. *William Hobby* had Iſſue *Philip* and *Mary*, and was attainted of Treaſon, and died, *Philip* purchaſes Lands, and died without Iſſue; it was adjudged in that Caſe, that *non obſtante* the Attainder of *William Hobby*, *Mary* ſhould

ſhould inherit, becauſe the Deſcent and Pedigree between *Philip* and *Mary* was immediate, and the *Law regards not the Diſability of the Father*.

If the Heir of the Part of the Father be attaint, the Land ſhall eſcheat, and ſhall never deſcend to the Heir of the Part of the Mother; but if the Son purchaſe Lands, and has no Kindred of the Part of the Father, but an Alien, it ſhall deſcend to the Heirs of the Part of the Mother. 49 *E.* 3. 12. *per Tanks* and *Percehay.*

IX. Thoſe that are born *ſub fide, legiantia, obedientia Domini Regis* are not Aliens; and therefore thoſe that were born in *Gaſcoyn, Normandy, Aquitain, Tournay, Callis, Guyan*, whilſt they were under the Dominion of the Kings of *England*, were natural born Subjects, and not Aliens. 7 *Co.* 21. *Calvin's* Caſe.

Scotland is a Kingdom by Union, and therefore thoſe that were born in *Scotland* under the Allegiance of the King, as of his Kingdom of *Scotland*, before the Crown came united, were Aliens born, and ſuch Plea againſt ſuch Perſons was a good Plea; but thoſe that were born ſince the Crown of *England* deſcended to King *James* are not Aliens, for they were born *ſub fide & legiantia Domini Regis*; ſo thoſe that are born at this Day in *Virginia, New-England, Barbadoes, Jamaica*, or any other of his Majeſty's Plantations and Dominions, are natural born Subjects, and not Aliens; ſo likewiſe thoſe that are born upon the King of *England*'s Seas are not Aliens. *Vaughan*, 268. *Craw verſus Ramſey*, 2 *Keb.* 601. Sir *John Burrough*'s Sovereignty of the Seas, *fol.* 102.

X. But if an Alien be made an Abbot, Prior, Biſhop, or Dean, by the Plea of an Alien, we ſhall not diſable him to bring any real or mixed Action concerning the Poſſeſſions *Co. Lit.* 129. b.

ſions that he holds in his politick Capacity, *becauſe the ſame is brought in autre droit.*

Dy. 2. *pl.* 8. *Lutw.* 35. *Salk.* 46.

The like Law is for an Executor or Adminiſtrator, becauſe the Recovery is to another's Uſe, 3 *Cro.* 683. yet ſee the ſame *Book* 142. *pl.* 7.

1 *Brownlow* 42.

If an Action is brought againſt an Alien, and there is a Verdict and Judgment againſt him, yet he may bring a Writ of Error and be Plaintiff there, and that ſuch Plea is not good in that Caſe.

Goldsborough, fol. 29. *Mich.* 30 *Eliz.* *Coke* 5, *Page's* Caſe. *Moor* 4. *Walton ver. Maſhum. Dyer* 282. *Alien Staundfort's* pl. Crown. *Regis. art.* 18. *fol.* 53. *tit.* King Seiſſin, *&c.*

Though an Alien may purchaſe, and take that which he cannot keep or retain, yet the Law hath provided a mean of Inquiry, before he can be diveſted of the ſame, for until ſome *Office* be found, the Freehold is in him.

And this Office, which is to gain to the King a Fee or Freehold, muſt be under the *Great Seal* of *England*, for a Commiſſion under the *Exchequer-Seal* is not ſufficient to entitle the King to the Lands of an Alien born, for the Commiſſion is that which gives a Title to the King, for before that the King hath no Title; but in Caſes of *Treaſon*, there upon Attainder the Lands are in the King without Office, and in that Caſe, to inform the Court a Commiſſion may go out under the *Exchequer-Seal.*

An Alien cannot purchaſe Lands for his own Benefit; but he may for that of the Crown. *Lucas's* Reports 91. 94. 120. 122. 136.

Therefore if Land be deviſed to an Alien, the Crown ſhall have it, *ibid.* 94. Yet if an Alien, Tenant in Tail, ſuffers a common Recovery before Office found, the Recovery is good, *ibid.* 124.

3 *Cro.* 123. *Plowd. Com.* 477.

XI. If an Alien and a Subject born purchaſe Lands to them and to their Heirs, they

are

are *joint Tenants*, and ſhall join in Aſſize, and the Survivor ſhall hold Place till Office found. 17 *E.* 3. *fol.* 10 *Hen. Hill's* Caſe.

By the finding of this Office the Party is out of Poſſeſſion, if the ſame be of Houſes or Lands, or ſuch Things as do lie in Livery; but of Rents, Common, Advowſons, and other Inheritances incorporeal which lie in Grant, the Alien is not out of Poſſeſſion (be they appendant or in groſs) therefore if an Information or an Action be brought for the ſame, the Party may traverſe the *Office* in that Court, where the Action or Information is brought for the King.

And if the King obtains not the Poſſeſſion within the Year after the Office found, he cannot ſeize * without a *Scire facias*. * 29 *Aſſize* 30, 31, 32. *Aſſize Travers* 32.

It is not for the *Honour of the King* (an Alien purchaſing of a Copy-hold) to ſeize the ſame, for that the ſame is a baſe Tenure; and ſo it was adjudged, † where a Copy-hold was ſurrendered to *J. S.* in Truſt, that one *Holland* an Alien ſhould take the Profits thereof to his own Uſe and Benefit; upon an Inquiſition taken, it was adjudged the ſame was void and ſhould be quaſhed, becauſe the King cannot be intitled to the Copy-hold Lands of an Alien, nor to the Uſe of Copy-hold Lands, as the principal Caſe was. vouched in *Staunford plt. fol.* 54. *cap.* 18. † *Styles* 20.

XII. An Alien Infant, under the Age of 21 Years, cannot be a Merchant Trader within this Realm, nor can he enter any Goods in his own Name at the Cuſtom-houſe. 13 & 14 *Car.* 2. *c.* 11. §. 10.

If an *Engliſh* Man ſhall go beyond the Seas, and ſhall there become a ſworn Subject to any *Foreign Prince* or *State*, he ſhall be looked upon in the Nature of an Alien, and ſhall pay ſuch Impoſition, as Aliens; if he comes 14, 15 *H.* 8. *cap.* 4.

and

and lives in *England* again, he ſhall be reſtored to his Liberties.

1 *Ro.* 144. 3 *Bulſtr.* 9. An Alien is robbed, and then he makes his Executor, and dies, and afterward the Goods are waſt, the Lord of the Franchiſe ſhall not have them, but the Executors. *Vide* 13 *E.* 4.

1 *Bulſt.* 134. *Yelverton* 198. *Turloote verſ. Monſon* 8 *Jac. B. R.* *Moore*, 431. All Perſonal Actions he may ſue as on a Bond, ſo likewiſe for Words; for the *Common Law*, according to the Laws of Nations, protects Trade and Traffick, and not to have the Benefit of the Law in ſuch Caſes, is to deny Trade.

But yet Aliens and Denizens are reſtrained by the Statute of 5 *Eliz.* to uſe any Trade, not having ſerved ſeven Years as Apprentices within the Realm. *Trin.* 12 *Car.* 1. at *Serjeant's-Inn* in *Fleet-ſtreet*, by all the Judges. *Hutton*'s Reports, *fol.* 132. but *quere* that Reſolution. *See* the Trades in Stat. 5 *Eliz.* alphabetically digeſted with Obſervations, in P. 170, of Laws concerning Maſters and Servants. *Foſt.* Cr. Law, 186. S. P.

Lord Raymond 282. An Alien Enemy commorant here by the King's Licence, and under his Protection, may maintain Debt upon Bond, although he came not with ſafe Conduct.

Where an Alien ſhould take by Courſe of Deſcent, there the Eſtate ſhall go over to him, to whom it would have gone in caſe the Alien had been already dead; as, where Tenant in Tail has Iſſue two Sons, and the eldeſt is an Alien, the younger Brother ſhall inherit. *Lucas* 116. Yet if an Alien be Tenant in Tail, Remainder to a natural born Subject, the Remainder-man cannot come in until the Eſtate Tail be ſpent. 10 *Mod.* 120.

CHAP.

CHAP. III.

Of Naturalization and Denization.

I. *Whether the Kings of* England *can naturalize without Act of Parliament.*

II. *What Operation Naturalization hath in reference to remove the Diſability ariſing from themſelves.*

III. *What Operation Naturalization hath in reference to remove Defects ariſing from a lineal or collateral Anceſtor.*

IV. *Where Perſons born out of the Realm may inherit by the Laws of* England.

V. *A Kingdom conquered, and united to the Crown of* England, *whether by granting them a Power to make Laws can implicitly create in them ſuch a Sovereignty, as to impoſe on the Realm of* England.

VI. *Of Perſons naturalized by a Kingdom dependent, whether capable of impoſing on one that is abſolute.*

VII. *Of Kingdoms obtained by Conqueſt, how the Empire of the ſame is acquired, and how the Conqueror ſucceeds.*

VIII. Ireland, *what Condition it was accounted before the Conqueſt in reference to the Natives of the ſame, and whether by making it a Kingdom, they can create a Foreigner as a natural born Subject of* England.

IX. *Of Aliens, in reference to the Tranſmiſſion of their Goods and Chattels by the Laws of* France.

X. *Of the Privileges the Kings of* England, *of old, claimed in the Eſtates of* Jews *dying commorant here, and how the ſame at this Day ſtands.*

XI. *Of Perſons born in Places annexed or claimed by the Crown of* England, *how eſteemed by the Laws of the ſame.*

XII. *Of Denization, and what Operation it hath according to the Laws of* England.

XIII. *Where an Alien is capable of Dower by the Laws of* England, *and where not, and of the total Incapacity of a* Jew.

XIV. *Whether a Denizen is capable of the Creation and Retention of Honour, by the Laws of* England.

I. THE Father aud Mother are the Fountain of the Blood natural, and as it is that that makes their Iſſue, Sons or Daughters, ſo it is that that makes them Brothers and Siſters; but it is the civil Qualifications of the Blood that makes them inheritable one to the other, and capable of enjoying the Immunities and Privileges of the Kingdom; but that is from another Fountain, *viz.* the Law of the Land, which, finding them legitimate, doth tranſplant them into the Civil Rights of the Land, by an Act called Naturalization; which does ſuperinduce and cloath that natural Conſanguinity with a Civil hereditary Quality, whereby they are enabled not only to inherit each other, but alſo to enjoy all the Immunities and Privileges that mere natural born Subjects may or can challenge.

Serv. lib. 2. *cap.* 12. II. According to the Laws of *Normandy* the Prince might *naturalize*; but ſuch *Naturalization* could not diveſt the Deſcent already veſted.

4 *Inſt.* 129. a. But according to *our Law* by no way but by *Act of Parliament*, and that cures the Defect as if they had been born in *England*, and no Man ſhall be received againſt an *Act of Parliament* to ſay the contrary.

Therefore if the Father an *Alien* has Iſſue a *Son* born *here*, and then the Son is naturalized, the Son ſhall inherit.

Co. Lit. 129. If the Father, a *natural born* Subject, has Iſſue an *Alien* who is *naturalized*, the Father dies, the Son ſhall inherit.

III.

III. *Naturalization* does remove all that *Diſability* and *Incapacity*, which is in Aliens in reſpect of themſelves, and ſo puts them intirely in the Condition as if they had been *born in England*.

The *Relative* Terms, as if *born* in *England*, is generally uſed to ſupply the *perſonal Defect* of the Parties naturalized, ariſing from their *Birth out of England*, and therefore ſhall never be carried to a *collateral* Purpoſe, nor cures a Diſeaſe of *another* Nature, as *half Blood*, *Illegitimation*, and the like; but all Diſeaſes, whether in the *Parties* themſelves, or reſulting from the Anceſtor, it cures.

Acts of Parliament of this Nature may be ſo penned, as to cure Defects in the *Father* or *Anceſtor*, or in the Parties *themſelves*.

If *Reſtitution* in Blood be granted to the *Son* by *Act of Parliament*, this cures that *Diſability* that reſulted from the *Father*'s Attainder, and that not only to the *Son*, but alſo to the *collateral Heirs* of the Father; the true Reaſon of this is, becauſe *the Corruption of the Blood by the Attainder is only of the Blood of the Father, for the Son's Blood or collateral Heir was not at all corrupted*; for the Scope of the Act *taking* notice of the Father's Attainder, does *intentionally* provide againſt, and remove it, for otherwiſe the ſame had been uſeleſs. 3 *Inſt.* 241.

But in *Naturalization*, without expreſs Words, it takes no notice of the Defects in the Father or other Anceſtor, nor removes them.

And therefore ſuch *Acts of Parliament* as take no other notice but of the *Perſon naturalized's Foreign Birth*, the ſame cures not any Diſability of *Tranſmiſſion hereditary* between

the Father, Brother, or any other Anceſtor, *reſulting* from the Diſability of them without *actually naming of them*; as for inſtance, the Father an Alien, the Son naturalized by Act of Parliament, the Father or any other Anceſtor an Alien purchaſes Lands and dies, the Son ſhall not take by reaſon of the Diſability in the Father, but there *may be Words* inſerted in the Act that may take away the Impediment.

p. 242.

King's Natural born Subjects ſhall inherit as Heirs to any Honours, Manors, &c. tho' their Parents were born out of the King's Dominions.

By Stat. 11 and 12 *W.* 3. *c.* 6. All Perſons, being the King's natural born Subjects, may inherit as Heirs, and make their Titles by Deſcent from any of their Anceſtors lineal or collateral, altho' the Father and Mother, or other Anceſtor of ſuch Perſons, through whom they derive their Title, be born out of the King's Allegiance.

p. 242.

None to inherit by the recited Act, but ſuch as ſhall be in being, at the Death of the Anceſtor who ſhall die ſeiſed.

By 25 *Geo.* 2. *c.* 39. *Sect.* 1. The 11 and 12 *W.* 3. *c.* 6. ſhall not extend to give any Right to any Perſon to inherit as Heir or Coheir to any Perſon dying ſeiſed of any Manors, Lands or Hereditaments, in Poſſeſſion, Reverſion, or Remainder, by enabling any ſuch Perſon to derive his Pedigree through any Alien Anceſtor, unleſs the Perſon ſo claiming or deriving his Title as Heir was in being, and capable to take the ſame Eſtate as Heir by virtue of the ſaid Statute, at the Death of the Perſon who ſhall ſo laſt die ſeiſed, and to whom he ſhall ſo claim to be Heir by the ſaid Statute.

If the Deſcent ſhall be caſt upon a Daughter, and the Alien Father, &c. ſhall afterwards have a

By *Sect.* 2. Provided that in caſe the Perſon who ſhall be in being, and capable to take at the Death of the Anceſtor ſo dying ſeiſed, and upon whom the Deſcent ſhall be caſt by virtue of this, or of the ſaid Act, ſhall be Daughter of an Alien; and the Alien Father

or

or Mother, through whom ſuch Deſcent ſhall be derived, ſhall afterwards have a Son born within any of his Majeſty's Dominions, the Deſcent ſo caſt upon ſuch Daughter ſhall be diveſted in favour of ſuch Son; and ſuch Son ſhall inherit and take the Eſtate as is allowed by the Common Law of this Realm, in caſes of the Birth of a nearer Heir; or in caſe of ſuch Father or Mother ſhall have no Son, but ſhall have one or more Daughters afterwards born within any of his Majeſty's Dominions, the Daughters, ſo born afterwards, ſhall inherit and take in Coparcenary with the Daughter, upon whom the Deſcent ſhall be at the Death of the Anceſtor laſt ſeiſed.

Son, the Daughter to be diveſted, and where no Son, the Daughters afterwards born in his Majeſty's Dominions, ſhall jointly inherit.

IV. There are four ways, by which Men born out of *England*, may inherit in *England*, beſides by the Statute of *Edward* the Third, *De Natis ultra mare*.

1. If they be born in any Dominion of the King's when he is actually King of *England*.

King de facto.

2. If they be made inheritable by Act of Parliament in *England*.

3. If they be born Subjects to a Prince, holding his Kingdom or Territories as Homager and Leigeman to the King of *England* during the Time of his being Homager: So the *Welch* were inheritable in *England* before 12 *Ed.* 1. though Subjects to the Princes of *Wales*, who were Homagers to the King of *England*. So were the *Scotch* in *Edward* the Firſt's Time; but when once the Homage determines, then they become Aliens, otherwiſe Subjects, and upon that Reaſon *Magdulph*, a *Scot*, appealed * from the Judgment of his Prince to *Edward* the Firſt, *ut Superiori Domino Scotiæ*; but then it muſt be underſtood where ſuch Prince is Homager *ſubjectionis*, and

Calvin's Caſe. 4 *Co.* 21. b.

* *Placit. Parl.* 21 *Ed.* 1. *fol.* 152, 157.

not only *infeodationis*, for another King may hold of the King of *England* an Island or other Territory by Tenure, and not be his Subject.

4. If the King of *England* enters in a hostile manner the Territories of another Prince or State, and any be born within any of the Places or Guards possessed by the King's Army, they are looked upon in Law to be within his Protection, and such Person born is a natural born Subject of *England*; but then he must be of Parents Subjects †, not hostile; and therefore a Bastard born in *Tangier* is capable of purchasing Land in *England*, if his Parents were Subjects.

† 5 *Eliz. Dyer, fol.* 224. *placit.* 29. *Craw ver. Ramsey, Vaughan*, 301. 2 *Keb.* 601.

V. Those that are born in *Ireland*, and those that are born in *Scotland*, are all alike; for their Births are within the King's Dominions, and they are born under the like Subjection and Obedience to the King, and have the like Band of Allegiance *ad fidem Regis*; yet if a *Spaniard* comes into *Ireland*, and by the *Parliament* is there naturalized, though perhaps this may qualify and cloath him with the Title of a *natural born* Subject of *Ireland*, yet it has been conceived, that it will not make him a natural born Subject of *England*.

For the Union of *Ireland* to that of *England*, is different from that of *Scotland*; for the first is dependent as a Kingdom conquered, the latter independent. Though *Henry* the Second, after his Conquest of that Nation, did remit over from *England* the ancient *modus tenendi Parliamentum*, enabling them to hold Parliaments, which after was confirmed by King *John*; yet that was by no other Force than bare Letters Patents. Now when a Nation is once conquered, there remains no Law, but that of the Conqueror; and

My Lord *Coke* so conceives, but Mr. *Selden* denies that ever there was any such *modus tenendi*, but the same is an Imposture. *Vide* his Tit. of Honour, *fol.* 708. 710, 718, to 721.

and though he may incorporate such conquered Nations with his own, and grant unto them their ancient Parliamentary Ways of making of Laws; yet the Conqueror can no ways grant unto them a Power, by virtue of such Grant or Confirmation, as to impose upon his own Country; for he himself, before such Conquest, could not make a natural born Subject without Act of Parliament, and most certainly his Conquest adds nothing to his Power, though it does increase his Dominion.

The Doctrine with respect to *Scotland* is intirely altered by the Union since our Author wrote. & Ireland. 1801.

VI. Again, Kingdoms that are absolute under one Prince, *ad fidem Regis*, there the Acts of each other are reciprocate, and one naturalized by the Parliament of *Scotland*, is as naturalized in *England*, because *Scotland* is a Kingdom absolute, and yet, in the Case of *Craw* and *Ramsey* *, it is there held, that an Alien naturalized in *Scotland* remains an Alien notwithstanding; but *Ireland* is a Kingdom dependent and subordinate to the Parliament of *England*, for the Parliament in *England* can make an Act to bind *Ireland*, but not *è converso*. Now to be a Native of *Ireland*, is the same as to be born in *Ireland*, but that is by the Laws of *Ireland*; but to be born in *Ireland*, and to be the same as to be born in *England*, must be by the Laws of *England*: But there is no Law that hath enabled them with such a Power, as to naturalize further than their own Laws extend; but the Law of *Ireland* does not extend into *England*, therefore Naturalization in *Ireland* operates only in *Ireland*, because of the Failure of Power.

Selden's Titles of Honour, *fol.* 213. in *Scotland*, the Title is *Carolus Scotiæ, Angliæ, Franciæ, & Hiberniæ Rex*; but in *Ireland*, *Angliæ, Scotiæ*.

Note, *Scotland* is not a Dominion belonging to the Crown of *England*, but to the King of *England*.

* *Vaughan* 301.

VII. Again, Kingdoms that are conquered, the Empire of the same may be acquired by

* From hence it is, that the

the Conqueror, only as it is in a King, or other Governor, and then the Conqueror only ſucceeds in his Right, and no further *; or alſo as 'tis in the People, in which Caſe the Conqueror hath Empire, ſo as that he may diſpoſe of it, or alienate it, as the People themſelves might; *for 'tis one Thing to inquire of the Thing, another, of the Manner of the holding of it*, the which are applicable not only to corporal Things, but incorporeal alſo: For as a Field is a thing poſſeſſed, ſo is a Paſſage, an Act, a Way; but theſe things ſome hold by a full Right of Property, others by a Right of Uſufructuary, others by a temporary Right. Again, by the Will of the Conqueror, the Kingdom or Republick that is ſo conquered, may ceaſe to be a Kingdom or Commonwealth, either ſo that it may be an Acceſſion of another Kingdom or Commonwealth, as the *Roman* Provinces, or that it may no ways add hereto any Kingdom or Commonwealth, as if a King waging War at his own Charge, ſo conquer and ſubject a People to himſelf, that he will have them governed, not for the Profit of the People chiefly, but of the Governor, which is a Property of that we call *Herile Empire* †, not of Civil; for Government is either for the Profit of the Governor, or for the Utility of the Governed; this hath Place among Freemen, that among Maſters and Servants. The People then that are kept under ſuch Command, will be always for the future not a Commonwealth, but a great Family: Hence it is that we may plainly underſtand, what kind of Empire that is, which is mixed of Civil and Herile, that is, where Servitude is mixed and mingled with ſome perſonal Liberty:

* King at this Day cannot alien or ſell *Ireland* without an Act of Parliament, for they whoſe Right he ſucceeds, could not do it, 4 *Inſtit.* 357. nor can he grant, *Portus Maris obedientiis advocationibus & patronationibus Eccleſiarum Metropoliticarum & Cathedralium Cancellor. Juſticiar.* nor *mero & mixto Imperio*, and many more, all which are inſeparably annexed to a Kingdom.

† *Imperium aliud eſt ob utilitatem ejus qui regitur, hoc inter liberos locum habet, illud inter dominos & ſervos*, Arit. *l.* 7. *de Republica.*

berty: For if the People are deprived of Arms, commanded to have no Iron but for Agriculture, to change their Language and Courſe of Life, and abſtain from the Uſe of many of their Cuſtoms, to be confined * to their own Houſes, Caſtles, or Plantations, nor wander abroad; to be governed by ſuch Laws as the Conqueror ſhould tranſmit to them †, all which are the Tokens of a Nation by Conqueſt made ſubordinate to the Conqueror, and are part Herile, and part Civil; and though they may remain a Kingdom, and abſolute within themſelves as to the making of Laws, to oblige each other, yet they can no ways impoſe on their Conqueror; for though that be true, which in *Quintilian* is alledged on the Behalf of the *Thebans*, that that only is the Conqueror's which he holds himſelf; but an incorporeal Right cannot be holden, and the Condition of an Heir and of a Conqueror is different, becauſe the *Right* paſſeth to the former by the Deſcent, but only the *Thing* to the laſt by virtue of the Conqueſt. But certainly that is no Objection, for he that is Maſter of the Perſons, is alſo Maſter of the Things, and of all Right which does belong to the Perſons; for he that is poſſeſſed ||, doth not poſſeſs for himſelf, nor hath he any thing in his Power who hath not himſelf; and ſo it is if he leaves the Right of a Kingdom to a conquered People, he may take to himſelf ſome things which were the Kingdom's, for it is at his Pleaſure to appoint what Meaſure he will to his own Favour: From hence it is we may obſerve what ſort of Empire that Kingdom is at this Day.

* Caſe of the Earl of *Shrewſbury* on the Stat. of 28 *H.* 8. of Abſentees, 4 *Inſt.* preſcribes, *fol* 354.

† Or elſe they came to *London* for them, *Cl.* 18 *H.* 3. *m.* 17. *Arioviſtus apud Cæſarem, jus eſſe belli ait, ut qui viciſſent, iis quos viciſſent quemadmodum vellent imparent. de bello Gallico, l.* 1.

|| *Leg. qui in ſervitute eſt, de reg. Juris Leg. ſi eveniet D. ad. Leg. Jud. de Adult.*

VIII. Now *Ireland*, before the ſame became united to the Crown by the Conqueſt of

Calvin's Caſe. 7. *Co.* 23.

of *Henry* the Second, the Natives were mere Aliens, and out of the Protection of the Laws of this Realm; yet when once they became a conquered People, and ſubject to the Crown of *England*, and united *ad fidem Regis*, then did ariſe their Allegiance; but that *Union* neither made them capable of the Laws of *England*, nor of their own, till ſuch time as the Conqueror had ſo declared them: Now what do they deſire in order to revive their Government? Firſt, they humbly beg of King *Henry* the Second, that ſince he was pleaſed that they ſhould remain as a diſtinct Dominion, *that their ancient Cuſtoms or Uſages ſhould not continue*; *that he would be pleaſed to ordain, that ſuch Laws as he had in* England * *ſhould be of Force, and obſerved in* Ireland; purſuant to which he grants them power to hold Aſſemblies by the *three Eſtates of the Realm*, and that they ſhould be regulated according to the Inſtitution and manner of the Parliaments in *England*, ſhould have the Benefit of *Magna Charta*, and other the great Laws of *England* †, and by ſuch Means put them into a Method of governing themſelves according to the known Ways of *England*, and to make ſuch Laws as ſhould bind among themſelves; and by following the Example of thoſe of *England* ‖, their Judgment might be ſuperviſed, and corrected according to the Juſtice and Laws of *England*, by Writs of Error, Appeal and the like.

* For at a general Council at *Caſſels* of all the Clergy there, *Anno* 1170. Eccleſiaſtical Laws of *England* were eſtabliſhed, and made of Force in *Ireland*, *Geraldus Cambrenſis Topographia Hiberniæ, lib.* 3. *cap.* 18. *Pat.* 8 *E.* 1. *m.* 13. *Hibern.*

† *Matthew Paris Hiſt. Angl. p.* 121. *Leges Angliæ ab omnibus ſunt gratè acceptæ.*

‖ 7 *Coke* 23. *Ryly's Placita Parliam.* 198. to 208.

Now here is no continuing or reviving their ancient Government, but the introducing a new one, part Civil, and part Herile; nor indeed

indeed had they before any ſuch thing as a Parliament there, or general Aſſembly of the three Eſtates; for when *Henry* the Second went over, there were ſeveral Kings or Scepts, who had their ſeveral and diſtinct Aſſemblies; but when they ſubmitted, this great Aſſembly of Eſtates which he conſtituted, was a Collection out of all of them, for their future well Government; ſo that whatſoever *modus* of Regimen the Conqueror declared, it was no more than for the well governing of the Place, and making ſuch Laws as were neceſſary, and proper amongſt themſelves: But for them to impoſe, by virtue of an Act of Naturalization, upon an abſolute Kingdom as *England*, without the Conſent of the three Eſtates of the ſame, ſurely was never intended, much leſs effected: The Caſe is both great, dubious, and curious, therefore *quære*.

Sir *John Davies* on the Conqueſt of *Ireland*, 103. 104, 105.

Vaughan 301. *Craw verſus Ramſey*. 2 *Keb.* 601.

IX. By the Laws of *France*, all Perſons not born under the Legiance of that King are accounted Aliens, and if they die, the King is intitled to their Eſtates; for all ſhall be ſeized into his *Exchequer*, or *Finances*; but if they make a Will, the Prerogative is diſappointed: Yet that extends only to Chattels perſonal, in which Strangers paſſing through the ſame, have greater Immunities than Aliens there reſident; for Travellers dying without Will, the Heirs or Executors ſhall have Benefit and Poſſeſſion of their Eſtates.

Act of Convention 1689.

X. The like Privilege the Kings of *England* formerly claimed in the Goods and Eſtates of the *Jews* after their Death, if the Heir ſued not, and paid a Fine to the King to enjoy them, as by this Record appears.

Juratores

Juratores ſuper ſacrum ſuum dicunt quod prædictum Meſſuagium fuit quondam Eliæ le Bland, *qui, &c. diem clauſit extremum, et quia mos eſt Judaiſmi quod Dominus Rex omnia bona Catalla Judei mortui de jure dare poterit cui voluerit, niſi propinquior hæres ejuſdem Judæi finem fecerit pro eiſdem; dicunt quod Dominus Rex dictum Meſſuagium dare poterit cui voluerit ſine injuria alicui facienda, ſi ita ſit quod hæres dicti* Eliæ, *finem non fecerit pro Catallis ejuſdem* Eliæ *habendis, &c.*

Eſcheat An. 52. *H.* 3. *Num.* 31.

Caroon's Caſe. *Hobby's* Caſe. *Stephen's* Caſe.

But whether the ſame is now uſed, may ſeem doubtful; for the Goods of Aliens eſcheat not at this Day to the Crown, but Adminiſtration ſhall be committed to the next of kin.

XI. By the Laws of *France*, *Flanders*, *Milan*, *Savoy*, and the *Frenche Compte*, though poſſeſſed by ſeveral other Princes, yet the Natives of the ſame partake in the Immunities with the natural born Subjects of *France*, and if they die without Will, their Heirs claim their Eſtates; the Reaſon given, becauſe, ſay they, thoſe Countries were never alienated from them, but were always annexed to the Crown of *France*, who acknowledges them to be his Subjects to this Day.

But in *England* it is otherwiſe, for thoſe that are born in *Gaſcoin*, *Normandy*, *Aquitain*, and thoſe other Territories which were formerly the Poſſeſſions of the Crown of *England*, in which, if any had been born when ſubject to the ſame, they would have been natural born Subjects, yet now are eſteemed Aliens; and ſo was the Caſe vouched by *Shard*, of a *Norman*, who had robbed, together with other *Engliſh*, divers of his Majeſty's Subjects in the narrow Seas, being taken and arraigned, the *Norman* was found guilty only of Felony,

Note, This was before the Statute of 25 *E.* 3. it's vouched by *Shard* in 40. Aſſize, *pl.* 24 See *Calvin's* Caſe, 7 *Co.* 21.

and

and the reſt of Treaſon; for that *Normandy* being loſt by King *John*, was out of the Allegiance of *Ed.* III. and the *Norman* was accounted as an Alien.

By Stat. 7 *Ann. c.* 5. *Sect.* 3. The Children of natural born Subjects, born out of the Ligeance of her Majeſty, ſhall be deemed natural born Subjects.

Children of natural born Subjects born abroad, to be deemed natural born Subjects.

By Stat. 4 *Geo.* 2. *c.* 21. *Sect.* 1. Children born out of the Allegiance of the Crown of *Great-Britain*, whoſe Fathers ſhall be natural born Subjects, ſhall by Virtue of the Act 7 *Ann. c.* 5. and of this Act, be natural born Subjects.

Children of natural born Subjects born out of the Allegiance of the Crown, declared to be natural born.

By Stat. 5 *Geo. c.* 27. *Sect.* 3. If any of the King's Subjects, being Artificers, ſhall go into any Country out of his Majeſty's Dominions, to exerciſe or teach any Trades to Foreigners; and if any of the King's Subjects, in any ſuch Foreign Country, exerciſing any Trades, ſhall not return into this Realm within ſix Months after Warning given by the Ambaſſador, Miniſter, or Conſul, of *Great-Britain*, in the Country where ſuch Artificers ſhall be, or by any Perſon authorized by ſuch Ambaſſador, *&c.* or by one of the Secretaries of State, and from thenceforth inhabit within this Realm; ſuch Perſon ſhall be incapable of taking any Legacy, or of being an Executor or Adminiſtrator, and of taking any Lands, *&c.* within this Kingdom, by Deſcent, Deviſe, or Purchaſe, and ſhall forfeit all Lands, Goods, *&c.* within this Kingdom, to His Majeſty's Uſe, and ſhall be deemed Alien, and out of His Majeſty's Protection.

After *May* 1, 1719, any Artificer going into a foreign Country, there to exerciſe his Trade, and not returning in ſix Months after warning given by the Ambaſſador, &c.

ſhall be incapable of taking any Legacy, &c.

Forfeit all his Lands, &c. and be deemed an Alien.

XII. In *France* the Kings may there Denizzee, ſo likewiſe here in *England*, but with this

Denizzation

Com. Rep. 687.

this Difference, the Letters of Denization by thoſe of *France* remove the total Diſability and Incapacity of the Alien:

Vide 1 *Inſt.* 129. a. The Difference between Naturalization and Denization.

But in *England* the Charter of Donation or Denization is but a temporary, partial, and imperfect *Amotion* of the Diſability of an Alien; for though it puts the Perſon indenized, as to ſome Purpoſes, in the Condition of a Subject, and enables a *Tranſmiſſion* hereditary to his Children, born after the Denization, yet it does not *wholly* remove the *Diſeaſe* or *Nonability*, as to the Points of *Deſcent* or *hereditary Tranſmiſſion*, and reſembles a Perſon in caſe of an *Attainder*, and therefore if he purchaſes Lands and dies without Iſſue, the Lord by Eſcheat ſhall have the Lands.

1 *Inſt.* 2.

And therefore in lineal Deſcents, if there be a Grandfather natural born Subject, Father an Alien, Son natural born Subject, the Father is made Denizen, he ſhall not inherit the Grandfather; and if the Father dies in the Life of the Grandfather, the Grand-child (though born after the Denization) ſhall not inherit the Grandfather, for the Denization does not remove, neither the perſonal, nor the conſequential Impediment or Incapacity of the Father.

Godfrey and *Dixon*'s Caſe. *Godbolt.* 175. *Dyer* 44. 1 *Inſt.* 31. b.

So likewiſe in collateral Deſcents; as for Inſtance, the Father a natural born Subject, had Iſſue two Sons Aliens, who are both made Denizens, and one dies, the other ſhall not inherit him.

XIII. The like Law in Dower, a Man ſeized of Lands in Fee, takes an Alien to Wife, and then dies, the Wife ſhall not be endowed: But if the King takes an Alien to Wife, and dies, his Widow Queen ſhall be endowed by the Law of the Crown. *Edmund*, Brother

Brother of King *Edward* the Firſt, married the Queen of *Navarre*, and died, and it was reſolved by all the Judges, that ſhe ſhould be endowed of the third Part of all the Lands whereof her Huſband was ſeized in Fee. 26 *Ed.* 1. *Rot. part* 1.

A *Jew* born in *England*, takes to Wife a *Jew* born alſo in *England*, the Huſband is converted to the Chriſtian Faith, purchaſes Lands, and enfeoffeth another, and dieth; the Wife brought a Writ of Dower, and was barred of her Dower. *Quia vero contra juſtitiam eſt quod ipſa dotem petat, vel habeat de tenemento quod fuit viri ſui ex quo in converſione ſua noluit ei adhærere, & cum eo convertere.* 1 *Inſt.* 31. b. 32. a. *Clauſ. H.* 3. *Mem.* 17. *Dorſ.*

XIV. If an Alien be a Diſſeiſſor, and obtains Letters of Denization, and then the Diſſeiſſor releaſe unto him, the King ſhall not have the Land; for the Releaſe hath altered the Eſtate, and it is as it were a new Purchaſe; otherwiſe it is, if the Alien had been Feoffee of the Diſſeiſſee. *C.* 1 *Inſt. fol.* 278. *B.*

And though Aliens are enabled by Charter of Denization to a Tranſmiſſion hereditary to their Poſterity of Lands, yet a Denizen is not capable of *Honour*, nor to a Tranſmiſſion of the ſame, without *Naturalization by Parliament*; for by the Charter of Denization he is made, *quaſi*, *ſeu tanquam ligeus*; but to be a Member of Parliament, he muſt be *ligeus revera*, *& non quaſi*, for by his becoming a Nobleman, he claims the Place of Judicature in Parliament, the which he cannot till naturalized by Act of Parliament, and then he may claim as eligible to the ſame, or any other: And the ſame Law is at this Day in *France*, where no Foreigner can hold any Honour or Dignity in the State or any Part of the Government. 'Tis true, Cardinal *Mazarine*, 4 *Inſt. fol.* 4. *Vide infra.* Decreed in the grand Eſtate of *Paris*, 1607.

zarine, who was an *Italian*, held a great Share in the ſame, but it was *vi*, *& manu forti*, and was the Occaſion of introducing a Civil War in that Kingdom; and yet the late Duke of *Richmond* claimed the Honour or Dignity of a Peer of *France*, as Lord of *Aubigny*, but that was a Title rather annexed to the Tenure of that Seigniory than otherwiſe.

V. de Monmouth Hiſt. of *France*, *f.* 15.

And though his Majeſty King *Charles* the Second was pleaſed to confer the Dignity of Dutcheſs of *Portſmouth* on the Lady *Querouaille*, yet the ſame was rather Honorary, than a Title conſiſtent with the Laws of *England*: For though his Majeſty is the Fountain of Honour, and may call the meaneſt of his Subjects to the higheſt of Dignities, yet it is their Civil Qualifications which make them capable of enjoying the Immunities and Priviſeges of Peers; but that flows from another Fountain, even the Law of the Realm, which as to Denizens diſable them to take ſo ſignal a Mark of Sovereignty without Act of Parliament.

By Stat. 12 and 13 *W.* 3. *c.* 2. *Sect.* 3. From the Time that the further Limitation by this Act ſhall take Effect, no Perſon born out of the Kingdoms of *England*, *Scotland*, or *Ireland*, or the Dominions thereunto belonging, altho' he be naturalized or made a Denizen (except ſuch as are born of *Engliſh* Parents) ſhall be capable to be of the Privy Council, or a Member of either Houſe of Parliament, or to enjoy any Office or Place of Truſt, either Civil or Military, or to have any Grant of Lands, Tenements or Hereditaments from the Crown to himſelf, or to any other in Truſt for him.

Natura-

Naturalization cannot be performed but by Act of Parliament; for by this an Alien is put in exactly the ſame State as if he had been born in the King's Ligeance; except only that he is incapable, as well as a Denizen, of being a Member of the Privy Council or Parliament, &c. (1) No Bill for Naturalization can be received in either Houſe of Parliament, without ſuch diſabling Clauſe in it (2). Neither can any Perſon be naturalized or reſtored in Blood, unleſs he hath received the Sacrament of the Lord's Supper within one Month before the bringing in of the Bill; and unleſs he alſo takes the Oaths of Allegiance and Supremacy in the Preſence of the Parliament (3). *Black* Com. 374.

Theſe are the principal Diſtinctions between Aliens, Denizens, and Natives; Diſtinctions, which Endeavours have been frequently uſed ſince the Commencement of this Century, to lay almoſt totally aſide, by one general Naturalization Act for all foreign Proteſtants. An Attempt which was once carried into Execution by the Statute 7 *Ann. c.* 5. but this, after three Years Experience of it, was repealed by the Statute 10 *Ann. c.* 5. except one Clauſe, which was juſt now mentioned, for naturalizing the Children of *Engliſh* Parents abroad. However, every foreign Seaman, who in Time of War ſerves two Years on board an *Engliſh* Ship, is *ipſo facto* naturalized (4); and all foreign Proteſtants and Jews, upon their reſiding ſeven Years in any of the *American* Colonies, without being abſent above two Months at a time, are upon taking the Oaths naturalized to all Intents

(1) Stat. 12 *W.* 3. *c.* 2. (2) Stat. 1 *Geo. c.* 4.
(3) Stat. 7 *Jac. c.* 2. (4) Stat. 13 *Geo.* 2. *c.* 3.

and Pupoſes, as if they had been born in this Kingdom (1), and therefore are admiſſible to all ſuch Privileges, and no other, as Proteſtants or Jews (2) born in this Kingdom, are intitled to. What thoſe Privileges are, was the Subject of very high Debates about the time of the famous Jew Bill (3); which enabled all *Jews* to prefer Bills of Naturalization in Parliament, without receiving the Sacrament, as ordained by Statute 7 *Jac.* 1. It is not my Intention to revive this Controverſy again; for the Act lived only a few Months, and was then repealed (4); therefore Peace be now to its *Manes*. *Ibid.* 375.

(1) Stat. 13 *Geo.* 2. *c.* 7. 20 *Geo.* 2. *c.* 24. 2 *Geo.* 3. *c.* 25.
(2) A pretty accurate Account of the *Jews*, till their Baniſhment in 8 *Edw.* 1. may be found in Book III. *c.* 6. of this Work.
(3) Stat. 26 *Geo.* 2. *c.* 26. (4) Stat. 26 *Geo.* 2. *c.* 26.

CHAP. IV.

Of Aliens, and Trials, *per Medietatem*, where allowed, and where not.

I. *Of the manner of Aliens obtaining Trials* per Medietatem, *at the Common Law, and of the Antiquity of the ſame.*
II. *Of the making the ſame a Law univerſal within this Realm, as to ſome Perſons, afterwards general, as to all.*
III. *Of the Writ, and ſome Obſervations on the Summons of ſuch an Inqueſt.*
IV. *Of the Opportunity loſt or gained by praying this Immunity.*
V. *Of the awarding of Tales upon Requeſt on ſuch Enquiries.*
VI. *Where*

VI. *Where this Immunity does not extend to Aliens, and where it does in Matters Civil and Criminal.*
VII. *Of the Validity of a Witneſs Alien, and of an Infidel.*
VIII. *The Title of a Renegado.*
IX. *Of the Benefit of the King's Pardon, whether it extends to an Alien, whoſe Abode is here, but happens to be abſent at the Time of the promulgating.*

I. TRIATIO *bilinguis*, or *per medietatem linguæ*, by the *Common Law* was wont to be obtained by *Grant* of the King, made to any Company of Strangers, as to the Society of *Lombards* or *Almaignes*, or to any other *Corporation* or *Company*; when any of them were impleaded, the Moiety of the Inqueſt ſhould be of their own Tongue; this Trial *per medietatem* in *England* is of great Antiquity, for in ſome Caſes Trials *per medietatem* was before the Conqueſt, *Viri duodeni Jure Conſulti, Angliæ ſex, Walliæ totidem, Anglis & Wallis jus dicunto*, and as the Commentator obſerves, it was called *Duodecim virile Judicium*. *Stanf. Pl. Coron. lib. 3. cap. 7.* *Lamb. fol. 91.* *Co. 1. Inſt. 155. b.*

II. This Immunity afterwards being found commodious to us *Iſlanders*, became univerſal; for by the *Statute* of 27 *E.* 3. *cap.* 8. it was enacted, that in Pleas before the *Major of the Staple*, if both Parties were *Strangers*, the Trial ſhould be by *Strangers*; but if one Party was a *Stranger*, and the other a *Denizen*, then the Trial ſhould be *per medietatem Linguæ*: But this Statute extended but to a narrow Compaſs, *viz.* only where both Parties were *Merchants* or *Miniſters of the Staple*, and the Pleas before the *Major of the Staple*: But afterwards in the twenty-eighth Year of the ſame King's Reign it was enacted, "That all manner of Inqueſts, which was to be taken *27 E. 3. cap. 18.* *28 E. 3. c. 13.*

or made amongſt Aliens and Denizens, be they Merchants or others, as well before the Major of the Staple, as before any other Juſtices or Miniſters;" although the King be Party, the one half of the Inqueſt or Proof ſhall be *Denizens*, the other half *Aliens*, if ſo many Aliens and Foreigners be in the Town or Place where ſuch Inqueſt or Proof is to be taken, that be not Parties, nor with the Parties in Contract, in Plea, or other Quarrel, whereof ſuch Inqueſt or Proof ought to be taken; and if there be not *ſo many* Aliens, then ſhall there be put in ſuch Inqueſts or Proofs *as many* Aliens as ſhall be *found* in the ſame Town or Places, which be not thereto Parties, as aforeſaid; and the Remnant of Denizens, which be good Men, and not ſuſpicious to one Party or other.

But if it be for Treaſon, *è contra. Vide poſtea Num.* 5.

By which *Statute* the ſame Cuſtom or Immunity was made a Law Univerſal, although it be in the Caſe of the King, for the Alien ſhall have his Trial *per medietatem.*

Dyer 144.

It matters not whether the Moiety of Aliens be of the ſame Country, as the Alien Party to the Action is; for he may be a *Dutch Man*, and they *Spaniards*, *French*, *Walloons*, &c. becauſe the Statute ſpeaks generally of *Aliens.*

Cro. Eliz. 818. 841. *Bro. tit.* Trial.

III. The Form of the *Venire facias* in this Caſe, is *De Vicineto*, &c. *quorum una medietas ſit de Indigenes, & altera medietas ſit de alienigenis natis*, &c. And the Sheriff ought to return *twelve Aliens* and *twelve Denizens*, one by the other, with Addition which of them are Aliens, and ſo they are to be ſworn; but if this Order be not obſerved, it is holden as a Miſreturn.

It has been conceived of ſome, that it is not proper to call it a Trial *per medietatem Linguæ*,

Linguæ, becauſe any Alien of any Tongue may ſerve; but that ſurely is no Objection, for People are diſtinguiſhed by their Language, and *Medietas Linguæ* is as much to ſay, half *Engliſh*, and half of any other *Tongue* or *Nation* whatſoever; nor matters it of what *ſufficiency* the Jurors are, for the Form of the *Venire facias* ſhall not be altered, but the Clauſe of *quorum quilibet habeat* 4. *l.* &c. ſhall be in. *Cro. El.* 841.

If *both Parties* are *Aliens*, then the Inqueſt ſhall be *all Engliſh*; for though the *Engliſh* may be ſuppoſed to favour themſelves more than *Strangers*, yet when both Parties are *Aliens*, it will be preſumed they will favour both alike, without any *Difference*. 21 *H.* 6. 4.

Where an Iſſue is joined between a Denizen and an Alien, and a *Venire facias* awarded *per Medietatem Linguæ*; and the Sheriff returns 12 Denizens and 12 others for Aliens, whereas in Truth there are not 12 Aliens nor 6 Aliens returned: In this Caſe it ſeems that the Alien may challenge the Array, for otherwiſe he hath no Remedy, if he ſhall be concluded by the Sheriffs Return. 2 *Ro. Abr.* 643.

But if he doth not challenge, and ſo they are impanelled, *&c.* it is ſufficient; yet if eight Denizens and four Aliens are impanelled, it is ill, becauſe it appears in this Caſe that the Trial is not *per Medietatem*. *Dy.* 28. 1. *in Margine.*

If a Writ of Inquiry of Damages be awarded in an Action between a Denizen and an Alien, the Inqueſt ſhall be all of *Engliſh*, and not Part of *Aliens*, for it is out of the Statute. *Cro. El.* 293.

IV. If an *Alien* is party, who ſlips his Opportunity, and ſuffers a Trial by all *Engliſh*, the Judgment is not *Erroneous*; for if he will be ſo negligent as to ſlip that Advantage *Dyer* 28. 2.

which the Law gives him, it is his Fault;
(a) *Dy.* 144. *pl.* 60. (*a*) for the Alien, if he will have the Benefit of that Law, muſt pray a *Venire facias per Medietatem Linguæ, at the Time of the awarding the Venire facias:* But if a Neglect of that Opportunity happens, yet if he prays it after
21 *H.* 7. 32. the awarding a general *Venire facias*, the ſame may be retrieved, ſo as it be before the *Venire* be returned and filed, for then he may have *Venire facias de novo*, or otherwiſe he
(*b*) *Pl. Coron.* 15 *c. Dyer* 357. 2 *Ro. A.* 643. *Cro. El.* 562. cannot, (*b*) nor can he afterwards challenge the *Array*, for this Cauſe, if it falls out the Juries are all *Denizens*, though *Stamford* ſeems to be of a contrary Opinion, for the Alien muſt pray it at his Peril, *Heyward* againſt
3 *E.* 4. 11, 12. *Lipſon.*

V. If there be general *Venire facias*, the Defendant cannot pray a *decem Tales*, &c. *per Medietatem Linguæ* upon this, becauſe the
10 *Co.* 104. a. *Tales* ought to purſue the *Venire facias:* But if the *Venire facias* be *per Medietatem Linguæ*, the *Tales* ought to be *per Medietatem Linguæ*, as if five Aliens and five Denizens appear on the principal Jury, the Plaintiff may have a
Cro. El. 818, 841. *Tales per Medietatem*; but if the *Tales* be general *de circumſtantibus*, it hath been held good enough, for there being no Exception taken by the Defendant upon the *awarding* thereof, it ſhall be intended well awarded.

21 *H.* 4. *Stamford* 154. *Hill.* 36. *Eliz.* Dr. *Lopez*'s Caſe by all the Judges. If an *Alien* that *lives* here under the Protection of the *King* of *England*, and Amity being between both Kings, commits *Treaſon*, he ſhall by Force of the Act of 1 and 2 *Philip* and *Mary*, be tried according to the due Courſe of the *Common Law*, and ſhall not in that Caſe be tried *per Medietatem Linguæ*.

But

But in the Caſe of *Petit Treaſon*, *Murder*, *Felony*, &c. if he prays his Trial *per medietatem Linguæ*, the Court ought to grant it. *Dyer* 144. Caſe of *Sherley* where the Point is fully handled,

Yet if an *Information* be exhibited againſt an *Alien*, and an *Engliſhman*, the Trial is not *per medietatem*, but according to the *Common Law*. 3 *Inſtit.* 27. *Moore* 557. *Barre's* Caſe.

If an *Alien in League* bring an Action (if there be Cauſe) the Defendant may plead in Abatement; but if it be an *Alien Enemy* he may conclude in the Action. *Colivre Coke's* Entries, *tit.* Alien 1. *Stam.* 160. *B.* 27 *Ed.* 3. *c.* 8. 28 *Ed.* 3. 13. 2 *H.* 5. 3. *Dy.* 28. a. *in Margine.*

In an Action for Words the Defendant pleaded not Guilty, and ſaid he was an Alien born, and prayed Trial *per medietatem Linguæ*, which was granted, and at the *Niſi prius* in *London*, but ſix *Engliſhmen* and five Aliens appeared, and the Plaintiff prayed a *Tales de Circumſtantibus per medietatem Linguæ*, and it was granted, ſo there wanted one Alien, and the Record was:

Ideo alius Alienigena de Circumſtantibus per Vic. London, *ad requiſitionem infra nominati* Julii Cæſaris, *per mandatum Juſticiariorum de novo oppoſito, cujus nomen pannello prædict. affilatur, ſecundum formam Statuti in hujuſmodi caſu nuper editi & proviſi; qui quidem Jurator ſic de novo appoſitus*, viz. Chriſtianus Dethick *Alienigena exactus venit, ac in Juratam illam ſimul cum aliis Juratoribus prædict. prius impanellatis & juratis juratus fuit*, &c. It was found for the Plaintiff, and afterwards moved in Arreſt of Judgment, that no *Tales* was to be granted *de Circumſtantibus*, when the Trial is *per medietatem Linguæ*, by the Juſtices of *Niſi prius*, by the Act of 35 *H.* 8. becauſe in the Act it is ſpoken of Freehold of Jurors, and an Alien is not properly ſaid of any Country, or to have any Freehold; but it 10 *Co.* 104. 2. *Mich.* 35, 36. *Eliz. in B. R.* Sir *Julius Cæſar Curſeny*, *Cr. Eliz.* 305.

was adjudged, becauſe the Statute was made for ſpeedy Execution, that it ſhould be expounded favourably, according to the Intent and Meaning of the Makers of the Act; and though in this Caſe the *Tales* was prayed by the Plaintiff, where it ought to have been *ad requiſitionem Defendentis*, yet that ſhould be taken to be but a Miſpriſion, and would be amended.

Dy. 28. *a Margine.* *Cro. El.* 275. VI. If the Plaintiff or Defendant be *Executor* or *Adminiſtrator*, though he be an *Alien*, yet the Trial ſhall be by *Engliſh*, becauſe he ſueth in *Auter droit*; but if it be averred, that the *Teſtator* or Inteſtate was an *Alien*, then it ſhall be *per medietatem Linguæ*.

Sherley a *Frenchmen*, who joined with *Stafford* in the Rebellion, in taking of *Scarborough Caſtle* in the County of *York*, he being taken, was arraigned in the King's Bench upon an Indictment of *Treaſon*, and the Indictment was *contra legiantiam ſuam debitam*; *7 Co.* 6. b. and the Indictment was ruled to be good, although he was no Subject, becauſe it was in the Time of Peace between the *Queen* and the *French King*. But if it had been in the Time of *War*, then the Party ſhould not have been *indicted*, but *ranſomed*. It was likewiſe ruled there, that the Trial was good, although the *Venire facias* awarded in *York* was general, and not *de medietate Linguæ*; for ſuch Trial *per medietatem Linguæ* does not extend to *Treaſons*, and the Indictment ought to omit the Words, *Naturalem Dominam ſuam*, and *Dyer.* 145. *Hob.* 271. *Salk.* 633. begin that he intended Treaſon *contra Dominam Reginam*, &c. *Hill.* 36 *Eliz.* in *B. R. Stephano Ferrara de Gama*'s Caſe in Dr. *Lopez*'s Treaſon.

If

If an *Alien Enemy* come into this Realm, and be taken in *War*, he cannot be indicted of *Treaſon*, for the Indictment cannot conclude *contra legiantiam ſuam debitam*, for he never was in the Protection of the King; and therefore he ſhall ſuffer Death by *Martial Law*, and ſo it was ruled in 13 *H.* 7. in *Perkin Warbeck*'s Caſe, who being an Alien born in *Flanders*, feigned himſelf to be one of the Sons of King *Edward* the Fourth, and invaded the Realm, with intent to take upon him the Dignity; who had his Judgment and Trial by *Martial Law*, and not by the *Common Law* of *England*. 7 *Co.* 6. b. Sir John *Davies's* Conqueſt of *Ireland*, *fol.* 103. 104, 105.

VII. The Kingdom of *Ireland* was a Dominion ſeparated and divided from *England* at the firſt, and came to the Crown of *England* by *Conqueſt*, in the Time of *Henry* the Second; and the meer *Iriſh* were as *Aliens*, *Enemies* to the Crown of *England*, and were diſabled to bring any Action, and were out of the Protection of the Laws of this Realm; and five *Scepts* of the *Iriſh* Nation were only enabled to the Laws of *England*, viz. *Oneil de Ultonia*, *O Molloghlin de Media*, *O Connoghor de Connacia*, *O Brian de Tholmonio*, and *Mac Morough de Lagenia*, as appears by the Records of the Dominion of *Ireland*, and ſeveral Grants have been made to the *Iriſh*, which proves them to be mere Aliens. But afterwards, though the ſame was a ſeparate and divided Kingdom, yet whilſt they were under the Subjection and Obedience of the Kings of *England*, if *High Treaſon* had been committed by an *Iriſhman*, he might be arraigned, indicted, and tried for the ſame within *England*, and by the *Laws* of *England*; and ſo it was reſolved by all the Judges of *Eng-* *Co.* 7. *fol* 23. *Calvin's* Caſe.

England in *Ornuke*'s Caſe, 33 *Eliz.* and alſo in Sir *John Perrot*'s Caſe, that *Ireland* was out of *England*, and yet that all *Treaſons* commited there, were to be tried in *England*, and that by virtue of the Statute of 38 *H.* 8. *cap.* 23. *Arthur Crobagen*, an *Iriſhman*, was arraigned, for that he being the King's Subject, at *Liſbon* in *Spain* uſed theſe words, *I will kill the King* (*inuendo Dominum Carolum Regem Angliæ*) *if I may come unto him, becauſe he is a Heretick*; that afterwerds he came into *England*, and was taken, and tried by a Jury of *Middleſex*, and was found guilty; and it was held High Treaſon by the Courſe of the *Common Law*, for his traiterous Intent, and Imagination of his Heart is declared by theſe Words, and within the Statute of 25 *E.* 3. he confeſſed he was a *Dominican Fryer*, and Prieſt in *Spain*.

Cro. Car. 333.

Bracton ſays, that an Alien born cannot be a Witneſs; but that is to be underſtood of an *Alien Infidel*; for the Biſhop of *Roſſe*, being an Alien born (a *Scot*) was admitted to be a Witneſs, and *ſworn*.

14 *Eliz.* in the Caſe of the Duke of *Norfolk*, 4 *Inſtit.* 279.

On a Complaint of *I. F.* at the Council, againſt General *S.* as Governor of *G. A. B. M.* a Moor was produced as a Witneſs, and ſworn upon the *Koran*. 2 *Stra.* 1104. N. B. *Lee* and *Willes*, Ch. Juſt. were both preſent.

Lord Chancellor *Hardwicke*, aſſiſted by *Lee* and *Willes*, Ch. Juſt. and *Parker*, Ch. Bar. were of opinion, that the Depoſitions of Witneſſes of the *Gentoo* Religion (*Mahometans*) ſworn on the *Koran*, according to their Ceremonies, ought, upon the ſpecial Circumſtances of this Caſe (and his Lordſhip declared he carried it no farther) to be read as Evidence in the Cauſe. *Atk.* Rep. 21. *pl.* 10.

2 *Eq. Cas. Abr.* 397. *pl.* 15. 2 *Stra.* 1104. in *Marg.*

An *Infidel* may bring an Action againſt another Merchant, or any other however *, and that without Controverſy. * 11. *H.* 8. *fol.* 4.

VIII. The Teſtimony of a *Renegadoe* is not to be received at this Day, by the Laws of any *Chriſtian Kingdom* or *Republick*; he that hath once renounced his *Faith* can never be believed, therefore he cannot be a Witneſs; and ſo it was ruled, where one *Domingo de la Cardre*, a *Renegadoe*, who was ſworn, and gave Evidence; afterwards a new Trial being granted, his Teſtimony was rejected, and he not ſuffered to be ſworn, it being at his Trial proved, that he was a *Spaniard, and a Chriſtian by Birth and Education, and after became a Jew.* *Hill.* 17, 18. *Car.* 2. *in B. R. Robles Langſton.*

IX. If an *Alien be Reſident*, and commits an Offence, he ſhall have the Benefit of the King's *general Pardon*; but if he is *not in the Kingdom* at the Time of the Pardon promulgated, then he loſes the Benefit of the ſame; for he is no otherwiſe a Subject, *but by his Reſidence here* *Hobart*, 271. *Courteen's* Caſe.

CHAP.

CHAP. V.

Of Planters.

I. *Of Poſſeſſion and its Original Right.*
II. *Of Vacancies natural, which give a Right to Planters.*
III. *Of Civil Vacancies, how far the ſame might be poſſeſſed.*
IV. *Of Perſons expelled, whether juſt to deny ſuch to plant in Places vacant.*
V. *Of Planters, whether they have a firm Right, ſo as to diſpoſe by Will, or only a Uſufructuary Poſſeſſion.*
VI. *Of Planters, wanting Things neceſſary for the Support of human Life, generally conſidered according to the Laws of Nature.*
VII. *Wherefore one Man may naturally have more than another, and what Conditions are annexed to ſuch Fortunes, for thoſe that are in Neceſſity.*
VIII. *Whence it is, that there was at the Beginning, and is ſtill a tacit Condition of re-aſſuming our original Rights in caſe of extreme or natural Neceſſity for natural Community.*
IX. *Of Neceſſity conſidered in a Chriſtian Community.*
X. *Of the Primitive Communion conſidered in reference to its Reſtrictions and Limitations.*
XI. *Of thoſe things that are dedicated to God, and holy Uſe, whether ſubject to the Relief of our Neceſſity.*

Aſcham. fol. 15.

I. HAVING in the firſt Chapter of this Work diſcourſed of the Original of Property, deducing its Inception to that which we call Poſſeſſion or *Meum*, and how the ſame may be altered by War, it may not ſeem unneceſſary to diſcourſe of the acquiring of Property in the new Diſcoveries of thoſe vaſt Immenſities of *America*, which being pre-

prepoſſeſſed, ſeem to deny us legally that Title which we pretend to.

Poſſeſſion by Law is eſteemed the higheſt Title that Men can pretend to what they enjoy, which is nothing elſe but *poſitio pedis*; as if the Ancients had no other Seal to confirm their Tenures, but the Prints of their Feet: And good Reaſon, ſeeing the Mind is not able to take up a Place ſo well as the Body; for many Men's Wills may concur in (wiſhing and liking) the ſame thing, but many Bodies cannot concur to the poſſeſſing it: Beſides the Mind cannot ſet an outward Mark on what it likes, that thereby others might be warned to abſtain from it, all which the Body properly doth. *Abraham* and *Lot* going to plant, declared no more than this, *there was Room or Vacancy enough*; and therefore, without further Examination or Scruple, they knew they might turn to the right Hand or to the left, to poſſeſs what they would to themſelves.

II. This Vacancy, which gives us a right to plant, is to be conſidered in two Reſpects; 1. Natural: 2. Civil: The firſt is in things which may be poſſeſſed, but actually are not, neither in Property nor Uſe; ſuch a Vacancy, which is *nullius in bonis*, might be occupied by *Switzers*, who, as *Cæſar* ſaith, would fain have changed their rough Hills for ſome near *Campania*; and Deſarts or Places uninhabited may be poſſeſſed and appropriated to the firſt Planter, and that without all Controverſy, but eſpecially by thoſe who being expulſed from their own Seats or Eſtate, ſeek Entertainment abroad: The *Anſebarians* in *Tacitus*, cry out, *As the Heaven to the Gods, ſo is the Earth granted to Mortals, and what is*

Tacit. Annal. 13.

is void is publick: Looking up to the Sun and Stars, they did openly as it were inquire of them, *Whether they were pleaſed in beholding any Ground empty, and without Inhabitants, they ſhould rather caſt forth the Sea, and overwhelm the Spoilers of the Earth.*

Ubi nec poſſeſſo eſt plene in homine, nec homo plene in poſſeſſione.

III. Civil Vacancy is where it is not abſolutely incorporated, as among the roving *Arabians* and *Moors* in *Barbary*, and other *Africans* and *Americans*, who poſſeſs one Place To-day, and another To-morrow; theſe by their frequent Returns ſhew, that they abandon not the Places they remove from, as *derelicta quæ quis in bonis amplius numerare non vult*; we cannot ſay, that their natural or voluptuary Intereſt in them is no way improved; for *Grotius* ſeems to be of Opinion, * that if there be ſome Deſert or barren Ground, the ſame ought to be granted to Strangers upon their Requeſt, and, ſays he, *It is alſo rightly ſeized on by them*, giving this Reaſon, *For that Lands ought not to be eſteemed occupied which are not cultivated; but only as to the Empire, which remains intire to the firſt People*, they do no Offence who inhabit, and manure a Part of the Land that lies neglected †.

* *De Jure Belli ac Pacis lib. 2. cap. 2. §. 17.*

† *Dion. Pruſæenſes, Orat. 5.*

But we muſt preſs this Argument of *Grotius* very tenderly, leſt by the ſame Reaſon others conclude, that thoſe Eſtates which are not competently improved, are derelict and occupiable by others, which would introduce perpetual Confuſions, and eaſily perſuade every Man, that he could huſband his Neighbour's Lands better than himſelf: However, this is a clear Caſe for all Planters, that thoſe Waſtes, or *aſperi montes*, which the Natives make no uſe of, nor can receive any Damage by

Rectè facta eſt conceſſio, quæ eſt ſine damno alterius.

their

their being poſſeſſed by others, may lawfully be impropriated by them.

IV. Again, if a Nation or People expelled their own Country, ſhould deſire to ſeek void Places, or at leaſt ſuch as might not abſolutely endamage a People into whoſe Territory they come, they may juſtly plant; the Reaſon is, for that Dominion or Property might be introduced with a Reception of ſuch Uſe which profits * ſuch diſtreſſed People, and hurts not thoſe; and therefore the Authors of Dominion are ſuppoſed willing rather to have it ſo; but to give away that which we have but a bare Right to, and no Poſſeſſion, can neither be juſt in the Giver, nor lawful in the Receiver. We have an eminent Example of this amongſt the *Turks*; for the *Tartars*, having over-run the North of *Aſia*, and many Nations, fled from their own Countries for fear of them, amongſt other the *Coraſines*, a warlike People, being thus unkennelled, they had their Recourſe to the *Sultan* of *Babylon*, and petitioned him to beſtow ſome Habitation upon them; their Suit, according to the Rules of Policy, he could neither ſafely grant nor deny; to admit them to be Joint-tenants in the ſame Country with the poſſeſſed *Turk*, would turn to a preſent Inconvenience and a future Miſchief, and to deny them, might perhaps edge their Diſcontents into Deſperateneſs; therefore, inſtead of giving them Gold, he ſent them to the Mines, yet ſo as they took it as a very great Courteſy; for he beſtowed on them all the Lands which the Chriſtians held in *Paleſtine*, liberally to give away what was none of his, and what the others muſt purchaſe before they could enjoy: Sad was the Donation;

Bald. 3. *Conſ.* 293.

* *Serv. ad* 7. *Æn. Littuſq; rogamus innocuum, cujus vindicatio, ait, nulli poſſit nocere.*

Matthew Paris, fol. 851.

Matthew Paris, fol. 834, 835.

Donation; for by virtue of that Conveyance they became Conquerors of *Jeruſalem*, and of the whole Strength of the Chriſtians.

V. But admitting that Planters may appropriate a Plantation for their Living, whether ſuch may diſpoſe of the ſame by Will (we ſuppoſing the Poſſeſſor having no Heir) for that he might ſeem to have but a uſufructuary Poſſeſſion, till a Deſcent had been caſt, which then perhaps may turn the ſame into a Right: † Without all Controverſy the very immediate poſſeſſing and planting creates a Right againſt all, but he that hath Empire there, and that very Right, the Party in his Life-time might have actually transferred over to another. Now though the Deviſe in the Will operates not till after his Death, yet the Gift is made during his Life; according as the *French* have it, *Se deſpouiller avant que s'en aller coucher*, that is, Man firſt puts off his Cloaths, and then goes to Bed.

† As it is conſonant to Nature that my Share of Subſiſtence, which was before uncertain, ſhould now be fixed, ſo it is neceſſary, that the Conſent which others gave to this at firſt ſhould ſtand fixed, eſpecially if there was no Obligation or Declaration at the firſt to the contrary. *Vide Selden de Jure Nat. & Gen. ad men. Heb. id. obligat. quod eſt ex officio quod legis eſt:* But the Sanction of a Law ſuppoſes the Nullity of a State of Nature, not of a Right of Nature.

VI. Again, Perſons having arrived in thoſe Territories, and planted, but before they have reapt the Fruits of their Labour, Neceſſity is found within their Huts, and a Supply of things for the Support of human Life is wanting, whether ſuch may ſeek the Means of Subſiſtence by the Laws of Nature, and in caſe of Refuſal (after Requeſt) force them from their Neighbour Planter? Surely that which is neceſſary for my natural Subſiſtence, and not neceſſary to another, belongs juſtly to me, unleſs I have merited to loſe the Life which

which I ſeek to preſerve. There were a Defect in God's creating our Natures, ſuch as they are, if he did not provide Means to uphold their Beings, according to the natural Faculties which he hath given them. A good Mother divides her Bread among her Children, ſo as a Morſel may come to each; let us therefore judge this Caſe by thoſe Rules of Juſtice, by which we judge other Caſes: If a Father in his Will paſs by a Child, or names him, but upon falſe Cauſes leaves him nothing, he is notwithſtanding by the Equity of the *Civil Law* admitted to a Child's Part, as *legitimate*, and may form his Action *contra Teſtamentum inofficioſum*. Men are all akin, and we derive one from another, and to let others ſettle in our Places, who may juſtly expect as much due to them, for their natural Subſiſtence, as was to thoſe who before went out of the World, to make Place for them, yea though they aſſign them nothing at their Departure.

Pia mater panem inter liberos diſtribuit, ut fructus veniat ſingulis.

Man were of all living Creatures moſt miſerable, if he might not during this Life have that Meaſure, which God would not have an Ox defrauded of; thus hath every Dunghil-Fly a Right to live, and to remain inſectile, which beſides Exiſtence hath Senſe, and may not juſtly be deprived of that its chiefeſt Felicity, unleſs it be importunate to a nobler Creature.

VII. 'Tis very true, that no Man can pretend to ſhare in the Sweat of another Man's Brows, or that the Pains, and waſting of another Man's Life, ſhould be for the Maintenance of any but his own; nay, though it be granted, that thoſe Neighbour-planters, who being ſettled before us, and having ac-

quired either by Induſtry, or lawful Donation, the Fruits of other Men's Labours, and conſequently muſt enjoy more Plenty than a new Comer or Planter, yet all that they poſſeſs is not properly theirs; for if another by extreme Neceſſity be periſhing, and they have above what they can conſume in a natural way, then they have no fuller a Property in that Plenty than Stewards have, and for this Regard they are ſo called in Scripture: *The Earth ſtill is the Lord's, and the Fulneſs of it is his, for he made it of his own Matter, and for the Faſhion of it uſed not our Aid; yea, it is his Sun which ſtill produces, and his Clouds which drop Fatneſs:* We can only pretend the Contribution of a little Pains for that which is our natural Share; ſo that in plain Reaſon we may not expect to be otherwiſe qualified than Stewards, for all that which is not probably neceſſary for our own Subſiſtence, or for theirs, who ſubſiſt only by us: Wherefore if *Lazarus* ready to periſh (not by Fault, but by Misfortune) had taken *Dives* his Crumbs, contrary to his Will; yet he had ſinned no more than he who takes ſomething which the Lord or Maſter hath given him, tho' the Steward contradict it: But if it ſo happen, that both the Planters are *in pari neceſſitate*, then *melior eſt conditio poſſidentis*; or, as St. *Paul*'s Words are, when he excited the Churches Charity and Alms, for the Relief of the diſtreſſed Members of Chriſt, *Not* (quoth he) *that other Men be eaſed, and you burdened.*

Xenophon in the anſwer to the *Cynopenſes: Ubi jus emendi nobis non conceditur ſive in Barbarico, ſive in Gracanio ſolo ubi quæ opus ſummus, non per vim, ſed ex neceſſitate. Exped. Cyri.*

Leſſius. lib. 2. cap. 12. dub. 12. num. 70.

2 Cor. 8. 13.

VIII. The Will of thoſe who firſt conſented mutually to divide the Earth into particular Poſſeſſions, was certainly ſuch as receded as little as might be, from natural Equity; for written Laws are, as near as poſſible, to

be

be interpreted by that; and therefore in Caſes of ſuch Extremities we are not without Examples, of taking the Goods of one to ſupply the Neceſſities of many: And therefore at Sea, if Proviſions begin to fail in a Ship, every one may be forced to bring out openly, what he laid in for his Paſſage in particular; ſo a Ship at Sea, having in Streſs of Weather ſpent her Sails, Cordage, and Anchors, meeting other Veſſels at Sea, may take a Supply of ſuch as ſhall be wanting; but yet governed according to St. *Paul*'s Words, *So that ſuch taking ſtraitens not the other Ship.* So when the Sea breaks in upon a Country, we may dig in the next Man's Grounds to make a Bank, without ſtaying for the Owner's Permiſſion, yea tear down any Man's Hedge or Fence when the common Paſſage is ſtopped: For in ſuch Caſes of Neceſſity, human Laws (as is mentioned afore) do not ſo much permit as expound their natural Equity, and that which Men give to thoſe who are ſo innocently diſtreſſed, who borrow Life only from the Shadows of Death; *Et picta ſe tempeſtate tuentur*, is not ſo properly a Charity to them as a Duty; and if he be a Chriſtian that gives, perhaps he doth more Charity to himſelf than to the Receiver.

Grotius de Jure Belli ac Pacis, lib. 2. cap. 2. §. 7, 8, 9.

Leges humanæ obligant uti factæ ſunt, ſcilicet cum ſenſu humanæ imbecilitatis.

IX. The Reaſon of this Chriſtian Charity or Communion is as far above the natural, as Chriſt himſelf was above Nature; this requires an equal Beating of all Pulſes, that as Fellow-Members we have a *homogeneal* Senſe and Palpitation; we are to divide a Cruſe of Oil, and a few Handfuls of Meal, with one of Chriſt's Flock, with an abandoned Creature; and what can be in more Extremity than a

Nequicquam fundo ſuſpiret nummus in imo.

poor Planter in a ſtrange Place, deſtitute for the preſent Supports of human Life?

And ſurely the Violation of this *Jus Charitatis* is no leſs than Theft in thoſe, who having extended Fortunes, never defalcate a *Gibeonite*'s Cruſt perhaps for a wandering Angel; theſe ſteal even the ſhipwrecked Man's Picture from him, which as his whole Inheritance he carried at his Back, to move Compaſſion, and by the inſatiable Sea of their Avarice and Luxury, they wreck him over at Land.

X. But this free primitive Communion had, and hath its Bounds, and its *quantum* in Contributions, as well as the natural, otherwiſe it might be fraudulent, and thieving: For they who poſſeſs but a little, would contribute it all, on purpoſe to ſhare equally with thoſe who poſſeſs very much, which would introduce a viſible Decay and Ruin in all; as *Tiberius* rightly obſerved * on *M. Hortalus* his petitioning an Alms for *Auguſtus Cæſar*'s Sake, *Idleneſs would increaſe, and Induſtry languiſh, if Men ſhould entertain no Hope nor Fear to themſelves, but ſecurely expect other Men's Relief, idle to themſelves, and burdenſome to us?*

* *Intenditur inquit ſocordia langueſcet induſtria, ſi nullus ex ſe metus aut ſpes, & ſecuri omnes alient ſubſidia expectabunt, ſibi ignavi, & nobis graves:* Tacit.

Wherefore in the midſt of that primitive Communion, we find that the Apoſtles went *domatim*, from Houſe to Houſe breaking of Bread, therefore they even then retained by their Houſes in Property; which Property is ſuppoſed by the eighth Commandment, as well as it is by Chriſtian Charity: For no Man can ſteal, but by invading the Right of another; and as for Charity, it is neceſſary he have ſomething of his own, to be able to fulfil its Commands, and to make a Dole at his Door; and it is very convenient that he give it rather with his own Hand, than by

ſome

ſome publick Collectors, *For Charity is heated moſt with the Senſe of its own Action.* Moreover under the Law, Jews were commanded *to love one another as themſelves*; yet this Command took not away Property then, therefore it takes it not away now, notwithſtanding we owe the Uſe or Uſufruct of our Properties to the Diſtreſſed, though ourſelves be at the ſame time in Diſtreſs; juſt as we are commanded, by the Peril of our own Lives, to endeavour to ſecure our Neighbours Life, which is yet a Charity more tranſcendent than the other, by how much Life is above a Livelihood. And though the various Laws of Countries have variouſly provided Puniſhment for thoſe, who out of mere Neceſſity take ſomething out of another's Plenty; yet that proves not the Act to be Sin, or repugnant to Equity or Conſcience, but rather repugnant to the Convenience of that Kingdom or Republick where the Act is committed; and the true Reaſon of the ſame is, leſt thereby a Gap might be laid open to Libertiniſm; beſides, Reaſon of State, we know, conſiders not Virtue ſo much as publick Quiet and Conveniency, or that Right which is *ad alterum*. Mat. 7. 12.

XI. We will now conſider thoſe Things which are God's, which yet are not his in ſuch a ſtrict rigorous Senſe, but that they lie open to the Exceptions of our juſt Neceſſities; hence that which is devoted as a Sacrifice to him, in caſe of Neceſſity, may be made our Dinner, witneſs the Action of *David*: Wherefore the Conſequence of our Saviour's Anſwer was very ſtrong, when he defended his pulling the Ears of Corn in another's Field: That if it was lawful for *David*

in his Neceſſity to eat that Bread, which was provided for the Table of God, then how much more was it lawful for him and his Apoſtles in their Neceſſities to take a refreſhing out of that which belonged to Man? by the *Canon Law*, if no other Means can be found, the Veſſels of the Altar may be ſold to redeem thoſe Souls who are enthralled in Miſery and *Captivity*; and is there not good Reaſon for it, ſeeing they ſerve but for the Souls of Men, and therefore the Souls of Men are more precious than they? Yea the Sacrifice itſelf, to what End is it, but to obtain a State of Piety for us?

Decretals of *Gratian, lib.* *Synodus Nicanenſis, Can.* *Synodus Aureliacenſis, Can. Concilium Toletanum.*

Upon what hath been ſaid, it may not ſeem an Injury, if a Planter (wanting thoſe Things for the Support of human Life) requeſting a reaſonable Proportion of his Neighbour (having it to ſpare) with an Intention to repay, if denied, by Force to take the ſame from him; for that Reaſon which creates a Puniſhment in a ſettled Commonwealth, for the like Actions, does in ſuch Places fail.

Grotius de Jure Belli ac Pacis, lib. 2. cap. 2. §. 8, 9.

CHAP.

CHAP. VI.

Of the Jews.

I. *Of Conſiderations touching their various and ſeveral Forms of Government down till their total Extirpation.*

II. *Of their firſt coming into* England, *and when.*

III. *Of their State and Condition after their inhabiting here.*

IV. *Of their Privileges and other Immunities in reference to their Monies and Charters.*

V. *Of their Cheſts and Stars, and the Manner of Proceedings for the recovering of their Debts.*

VI. *Of their Charters and Immunities, and of the Confirmation of the ſame.*

VII. *Of the Conſequences and Inconveniences that fell and were occaſioned by reaſon of their Courts, as to the Eccleſiaſtical Cognizance.*

VIII. *Of their Power in erecting of Synagogues, and of the Foundation of the Houſe of Converts, now called the Rolls.*

IX. *Of their Charter obtained of the Prieſthood of all the* Jews *of* England.

X. *Of Places totally exempted in* England *from their Society.*

XI. *Of the Endowment of their Wives, according to the Laws of the* Jews, *and of their Power of Excommunication of each other.*

XII. *Of the real State and Condition that they remained in, notwithſtanding all their various and ſeveral Immunities.*

XIII. *Firſt, in reference to their Perſons, being obliged to wear Badges or Tables on their Breaſts, as Notes of Diſtinction, and having entered the Realm, could not depart without Licence.*

XIV. *Secondly, as to their Eſtate, the ſame being ſolely at the Will of the King; for at their Death the ſame eſcheated; they could not ſue without Leave or Licence, the King might reſpite or releaſe the*

ſame, and have nothing but what was ſolely at the Devotion of the State; continued ſo till their total Baniſhment out of the Realm.

I. SINCE the Remainder of that mighty Nation, which of old were elected a People peculiar, are now, by him that firſt choſe them, diſperſed over the Face of the Earth, and are become the moſt politick of Traders now extant, having by their Induſtry cemented themſelves into the principal Revenues and Traffick of the Univerſe, but more eſpecially among thoſe Nations who remain in Darkneſs, and in the Shadows of Death. It might not ſeem improper to examine how their Condition ſtood of old in this Nation, what Advantages and Diſadvantages they brought to this Realm, and how the Laws of the ſame ſtand in reference to the People at this Day.

At the firſt the Fathers of their ſeveral Families, and the Firſt-born after them, exerciſed all kind of Government, both Eccleſiaſtical and Civil, being both Kings and Prieſts in their own Houſes, they had Power over their own Families, to bleſs, curſe, caſt out, diſinherit, and puniſh with Death, as is apparent by *Noah* towards *Cham*, *Abraham* towards *Hagar* and *Iſmael*, *Jacob* towards *Simeon* and *Levi*, &c. In *Moſes*'s Days then did this Prerogative of Primogeniture ceaſe; and as *Aaron* and his Poſterity were inveſted with the Right and Title of Prieſts, ſo *Moſes* and *Joſhua* governed the People in a kind of Monarchical Authority.

After *Joſhua* ſucceeded *Judges*, their Office was of abſolute and independent Authority, like unto Kings when once they were elected;

elected; but there were long Vacancies and Chaſms (commonly) between the Ceſſation of the one, and the Election of the other; yea, for the moſt part they ſeldom choſe a Judge but in the Time of great Troubles and imminent Dangers, which being over-paſt, he retired to a private Life, much ſymbolizing with the *Roman* Dictators, and continued with them according to the Computation of ſome 329 Years. In the Vacancies or Diſtances of Time between Judge and Judge, the greater and weightier Matters were determined by that great Court of the Seventy called the *Sanhedrim*, in which reſpect the Form of Government may be thought Ariſtocratical; Kings ſucceeded the Judges, and they continued from *Saul* to the *Captivity*, that is, about 500 Years. *Aug. de Civit. Dei, lib.* 18. *cap.* 22.

From the *Captivity* unto the coming of the *Meſſiah*, which is thought to have been 536 Years, the State of the *Jews* became very confuſed, ſometimes they were ruled by Vicegerents, who had not ſupreme Authority in themſelves, but as it pleaſed the *Perſian* Monarchs to aſſign them; they were called *Heads of the Captivity*, of which was *Zorobabel* and his Succeſſors down to *Hoſodia*, which were thought to have been of the Poſterity of *David*; ſo likewiſe the other ſucceeding ten chief Governors under *Alexander the Great*, in the laſt of thoſe ten, Government departed from the Houſe of *David*, and was tranſlated to the *Maccabees*, who deſcended from the Tribe of *Levi*, and from them the Sovereign Authority continued to *Herod the Aſkalonite* his Reign, at which Time our Saviour Chriſt was born according to *Jacob*'s Prophecy: *The Scepter ſhall not depart from* Judah, *nor a Lawgiver*, *Uſher.* Gen. 49. 10.

giver from between his Feet, until Shiloh (that is, the *Meſſiah*) come; which Scepter was given to *Judah*, that is, to the twelve Tribes from the Time of *Moſes*, and that it was taken fully from them in *Herod*'s Time, and given to him who was a * Proſelyte, and no ways decended from that holy Stock, for ſuch was *Herod*.

* A *Jew* is a Name of Profeſſion, not of Country or Nation. *Joſeph Scaliger ex quo Caſaubon, adv. Baron, pag.* 19. & 39.

Their Condition, ſince the Extirpation of their Commonwealth, and their diſperſing over the Face of the whole Earth, after the ſacking of their Metropolis, is fully related by *Joſephus*, *Euſebius*, and others, and what Condition, and how uſed in moſt Nations they have been ſince then, is fully illuſtrated by *Heylin* in his Microcoſm.

Fol. 568, 569.

II. When they came firſt into this Realm is not certainly related by any of the Hiſtorians in their Writings of *Britiſh* or *Saxon* Kings Reigns; however, this certainly appears, that *William the Conqueror* tranſlated the *Jews* in *Roan*, from thence to *London*, *ob numeratum pretium*, for a Sum of Money given by them to him, who accordingly appointed them a Place to inhabit and trade in, which being aſſigned them, they were under the Protection and Patronage of the King, and as his mere Vaſſals, their Perſons and Goods being his alone, and that they could diſpoſe of neither of them without his Licence; and this appears by that ancient Law related by Sir *Henry Spelman*.

Holinſhed. Vol. 3. *pag.* 15.

Concil. 623.

De *Judæis* in Regno conſtitutis.

Spelman Concil. 623.

"SCiendum eſt quoque, quod omnes *Judæi* ubicunque in Regno ſunt, ſub tutela & defenſione Domini Regis ſunt; nec quilibet eorum alicui diviti ſe poteſt ſubdere ſine Regis

Regis licentia. *Judæi*, & omnia ſua Regis ſunt. Quod ſi quiſquam detinuerit eis pecuniam ſuam, perquirat Rex tanquam ſuum proprium, (*or* detinuerit eos, vel pecuniam eorum, perquirat Rex ſi vult, tanquam ſuum proprium") as Sir *Henry Spelman* renders it.

III These People, after they had planted themſelves in this Iſle, and being thus protected, drove on the Trade and Traffick of the ſame with a mighty Hand, to ſuch a Height, that by the End of King *Rufus*'s Time, they became powerful, rich and numerous, and to that Degree ſo zealous for their Religion, that they not only held open Diſputes, but endeavoured to bring over by Monies the poor and needy to be of their Opinion. So high and inſolent were they grown up in a ſhort time, which continued till King *Henry* the Second's Reign, at which time their Condition became a Grievance to the Nation, by reaſon of their Oppreſſions, Murders, and Inſolencies, which that King taking into Conſideration, baniſhed the wealthieſt of them, and the reſt he fined at 5000 Marks. The moſt pernicious Act of Murder which they were accuſed of, was, that generally on a *Good-Friday* they would, if poſſible, get a Child of Chriſtian Parents, and crucify him in Deriſion of his Religion.

Jo. Brompton, Col. 1048.

Gervaſius Dorobernenſis in his *Chronica*, *Col.* 1043.

Fox, Vol. 1. *fol.* 305.

IV. King *Richard*, after his Return from the *Holy Land*, taking into Conſideration the Neceſſities and Straits that that expenſive Expedition had brought him under, and being deſirous to reduce the Monies and Eſtates of the *Jews* into ſuch a Condition, as if Neceſſity ſhould compel him to ſeize on the whole; but before the ſame could be done, it was pro-

Matthew Paris, fol. 641. *Rot. Pat.* 41. *H. B. m.* 4. *num.* 6. *Cok.* 4. *Inſtit. fol.* 254. *Joh. Brompton, Collect.* 1258. *Hollingſhed, Vol.* 3. *p.* 155.

propounded, that the King declaring his being ſenſible of the State and Condition of the *Jews*, a Means might be found out for the ſettling and peaceably driving of Commerce between the Chriſtians and them; whereupon Judges were appointed to hold Courts touching the Government of the *Jews*, and their Commerce was appointed out in theſe Words:

All the Debts, Pawns, Mortgages, Lands, Houſes, Rents, and Poſſeſſions, ſhall be regiſtered; the Jew, *who ſhall conceal any of theſe, ſhall forfeit to the King his Body, and the Concealment, and likewiſe all his Poſſeſſions and Chattels; neither ſhall it be lawful to the* Jew *ever to recover the Concealment; alſo ſix or ſeven Places ſhall be provided, in which they ſhall make all their Contracts, and there ſhall be appointed two Lawyers that are Chriſtians, and two Lawyers who are* Jews, *and two legal Regiſters, and before them and the Clerks of* William *of the Church of S.* Maries, *and* William *of* Chimilli, " ſhall their Contracts be made, and Charters ſhall be made of their Contracts by way of Indenture, and one Part of the Indenture ſhall remain with the Jew ſealed with this Seal, to whom the Money is ſent, the other Part ſhall remain in the common Cheſt, wherein ſhall be three Locks and Keys, whereof the two Chriſtians ſhall keep one Key, and the two Jews another, the Clerks of *William* of St. *Maries* Church and *William* of *Chimilli* ſhall keep the third; and moreover there ſhall be three Seals to it, and thoſe who keep the Seals ſhall put the Seals thereto. Moreover the Clerks of the ſaid *William* and *William* ſhall keep a Roll of the Tranſcripts of all the Charters; and as the Charters ſhall

be

be altered, ſo let the Roll be likewiſe; for every Charter there ſhall be 3 *d.* paid, one Moiety thereof by the Jew, and another Moiety by him to whom the Moiety is ſent, whereof the two Writers ſhall have 2 *d.* and the Keeper of the Roll the 3 *d.* and from thenceforth no Contract ſhall be made with, nor any Payment made to the Jews, nor any Alteration made of the Charters but before the ſaid Perſons, or the greater Part of them, if all of them cannot be preſent; and the aforeſaid Chriſtians ſhall have one Roll of the Debts and Receipts of the Payment, which from henceforth are to be made to the Jews, and the two Jews one, and the Keeper of the Roll one. Moreover, every Jew ſhall ſwear upon his Roll, that all his Debts and Pawns, and Rents, and all his Goods and Poſſeſſions, he ſhall cauſe to be enrolled, and that he ſhall conceal nothing, as is aforeſaid; and if he ſhall know that any one ſhall conceal any Thing, he ſhall ſecretly reveal it to the Juſtices ſent unto them, and that they ſhall detect and ſhew unto them all Falſifiers and Forgers of Charters, and Clippers of Monies, when and where they ſhall know them, and likewiſe all falſe Charters."

V. This Cheſt was called *Arca Chirographica*, or *Chirographorum Judæorum*, and the Notaries and Regiſters of them ſtiled *Chirographi Chriſtiani* and *Judæi Arcæ Chirographicæ London*, *Oxon*, or other ſuch City where ſuch Cheſts were uſually kept. All their Deeds, Obligations and Releaſes were uſually called *Stars* and *Starra*, *Starrum*, *Star* in our *Latin* Records, from the *Hebrew* Word (as Mr. *Selden* obſerves, *Shetar* contracted by the Omiſſion of *he*) which ſignifieth a Deed or Contract,

See *Purchas's* Pilgrimage, *l.* 2. *c.* 10. §. 7.

It's conceived the Star-Chamber was the old Receipt where the Cheſt for *Weſtminſter* remained

Contract. These Stars were for the most Part writ in the *Hebrew* Tongue alone, or else in *Hebrew* on the one Side or Top of the Parchment, and in *Latin* on the other Side or Bottom of the Deed after the *Hebrew*.

with the *Stars* of that City, and not so called, as it is mentioned, *Co. 4. Inst.* 66.

Some of them are now extant in the Treasury of the Exchequer in King *John*'s Reign.

If any Christian became indebted to any *Jew* by such *Star* or Writing put up and reserved in his Chest, and paid not his Money at the Day appointed, together with all the Interest where any Interest was reserved, then he sued forth Letters by way of Process against him both for the Debt and Interest under the Notary's or Register's Hand, to appear before the Justices especially appointed for the Government and Custody of the *Jews*, to recover the same; but yet such *Jew* could not obtain such Licence till he had paid a Fine to the King for the obtaining of such Letters, *unum Besantium, viz. Besantium* for every Pound, and such *Stars* were in the Nature of Judgments, upon which Extents were sued forth, and the Lands of the Debtors were seizable, notwithstanding in whose Hands soever they came, after the Star was entered into*: And if it happened, that any Persons denied their Deeds, or any Controversy did arise upon which there was any Trial, the same was by a Jury half of Christians, and the other of six legal *Jews*.

Vide Fine Rolls 6. *Johan. m.* 17. and likewise in *H.* 3. & *Ed.* 1.

* Fines 9. *Joh. mimb.* 5.

Such Stars or Chest-Judgments were assignable to Christians, together with the Extents upon them, and the Assignee might vouch over the Assignor to Warrantry in such Case. So likewise to the King they might assign over Debts to pay their Taxes.

Pat. pars 2. *An.* 3. *Hen.* 3. *m.* 1.

VI. As

VI. As this politick Prince had provided this Means for the diſcovering of their Eſtates, ſo he did from time to time award Commiſſions to Juſtices for the Trial of Cauſes and Controverſies that aroſe between Chriſtian and *Jew*, and granted them divers Liberties and Privileges, which afterwards were confirmed by theſe two enſuing Charters of King *John*.

Chart. 2. Joh. n. 49. Charta Judæorum Angliæ.

JOhannes *Dei Gratia, &c.* "Sciatis nos conceſſiſſe omnibus Judæis *Angliæ* & *Normaniæ*, libere & honorifice habere reſidentiam in terra noſtra & omnia illa de noſtris; & omnia illa quæ modo rationabiliter tenent in terris & feodis, & vadiis akatis ſuis: & quod habeant omnes libertates & conſuetudines ſuas ſicut eas habuerunt tempore predicti Regis *H.* Avi patris noſtri, melius & quierius & honorabilius, Et ſi querela orta fuerit inter Chriſtianum & *Judæum*, ille qui alium appellaverit ad querelam ſuam diratiocinandam, habeat Teſtes, ſcilicet legitimum Chriſtianum & *Judæum*. Et ſi *Judæus* de querela ſua Breve habuerit, Breve ſuum erit ei teſtis. Et ſi Chriſtianus habuerit querelam adverſus *Judæum* ſit judicata per Pares *Judæi*. Et cum *Judæus* obierit, non detineatur corpus ſuum ſuper terram, ſed habeant homines pecuniam ſuam & debita ſua, ita quod mihi non diſturbeter, ſi habuerit hæredem qui pro ipſo reſpondeat & rectum faciat de debitis ſuis & de forisfacto ſuo, Et liceat *Judæis* omnia quæ eis apportata fuerint ſine occaſione accipere & emere, exceptis illis quæ de Eccleſia ſunt & panno ſanguine lento. Et ſi *Judæus* ab aliquo appellatus fuerit ſine teſte, de illo appellatu erit quietus ſolo Sacramento ſuo ſuper librum ſuum, & de appellatu illarum rerum

rum quæ ad Coronam noſtram pertinent, ſimiliter quietus erit ſolo Sacramento ſuo ſuper Rotulum ſuum. Et ſi inter Chriſtianum & *Judæum* fuerit diſſentio de accommodatione alicujus pecuniæ, *Judæus* probatum Catallum ſuum, & Chriſtianus lucrum. Et liceat *Judæo* quiere vendere vadium, poſtquam certum erit, eum illud unum annum & unum diem tenuiſſe. Et *Judæi* non intrabunt implacitum, niſi coram Nobis, aut coram illis qui curias noſtras cuſtodierint, in quorum Ballivis *Judæi* manſerint. Et ubicunque voluerint, cum omnibus catallis eorum ſicut res noſtræ propriæ, & nulli liceat eas retinere, neque hoc eis prohibere. Et præcipimus quod ipſi quieti ſint per totam *Angliam & Normaniam* de omnibus conſuetudinibus & Theoloniis & modiatione vini ſicut noſtrum proprium catallum. Et mandamus vobis & præcipimus quod eos cuſtodiatis, & defendatis, & manu-teneatis, & prohibemus ne quis contra chartam iſtam de his ſupradictis eos in placitum ponat ſuper forisfacturam noſtram ſicut Charta Regis *H.* Patris noſtri rationabiliter teſtatur. Teſte *T. Humf.* filio *Petri* com. *Eſſex*, *Willielmo* de Mereſcal, Comb. de *Remb. Henr. de Bohun* Com. de *Hereford. Robert de Turnham*, *Willielmo Brywer*. &c. Stat. per manum *S. Well.* Archidiac. apud *Marleberg*, decimo die *Aprilis* Anno Regni noſtri ſecundo."

Chart. 2. Johan. n. 53. confirmatio Judæorum de Libert. ſuis.

JOhannes *Dei Gratia*, &c. "Sciatis nos conceſſiſſe, & preſenti carta noſtra confirmaſſe *Judæis* noſtris in *Anglia*, ut exceſſus qui inter eos emerſerint, exceptis hiis qui ad Coronam & Juſtitiam noſtram pertinent, & de Morte hominis & mahemio, & de aſſaltu præmeditato, & de fractura domus, & de raptu,

raptu, & de Latrocinio, & de combuſtione, & de Theſauris, inter eos deducantur ſecundum Legem ſuam, & emendentur, & Juſtitiam ſuam inter ſeipſos faciant. Concedimus etiam eis, quod ſi quis eorum alium appellaverit de querela quæ ad eos pertineat, Nos neminem compellemus ad teſtimonium cuiquam eorum contra alium exhibendum, ſed ſi appellator rationabilem & idoneum teſtem habere poterit, eum ſecum adducat. Si quod vero opus ſceleratum & apertum inter eos emerſerit quod ad Coronam noſtram vel ad Juſtitiam pertineat; ſicut de prædictis Placitis Coronæ licet nullus eorum noſter appellator fuerit, Nos ipſam querelam faciemus per Legales *Judæos* noſtros *Angliæ* inquiri ſicut Charta Regis *H.* Patris noſtri rationabiliter teſtatur. Teſte *G.* filio *Petri com. Eſſex*, *Willielmo* Mareſchallo com. de *Pembr. Hen. de Bohun* com. de *Hereford*, *Petro de Pratell. Roberto de Turnham*, *Willielmo de Waren*, *Hugo de Nevil*, *Roberto de Veteri Ponte.* Dat. per manum *S. Well.* Archidiac. apud *Merleberg* decimo die *Aprilis* Anno Regni noſtri ſecundo."

VII. This Court being thus erected for the Government of the *Jews*, under Colour of the ſame, there were many Evaſions found out to avoid the Puniſhments which they juſtly acquired for their ſeveral Delinquencies; and therefore when any of theſe *Jews* were convicted before any of the Eccleſiaſtical Judges for Offences againſt an Eccleſiaſtical Perſon, or for Eccleſiaſtical Things, or for Sacrilege, or for laying of violent Hands upon a Clerk, or for Adultery with a Chriſtian Woman, the Conuſance of the Cauſe was always avoided *Cok. 4. Inſtit. fol. 254.*

the King's Prohibition, becauſe (as was alledged) they had their proper *delegated Judges*, who ſhould and ought to have Conuſance of ſuch Things; ſo that if a *Jew* happened to be convened before the Judges aſſigned for ſuch things, upon denial of the ſame by the Perſon alone, the ſimple Aſſertion of another *Jew*, and of one Chriſtian without the adminiſtring of any Oath, they might have purged themſelves, the Proof of the Proſecutor being utterly rejected.

Matthew Paris additamenta, fol. 202. 207.

VIII. By the *Canon Law*, no *Jew* could build or erect a Synagogue, for if he did, the ſame was ſeizable into the Crown: The like was ſo done in the Year 1231, when they had erected and new-built a curious Structure for a Synagogue, the ſame was taken into the King's Hand *, and dedicated to the *Bleſſed Virgin*, and afterwards granted to the Brethren of St. *Anthony* of *Vienna*, and called St. *Anthonie*'s Hoſpital; but yet an old * Synagogue they might repair.

Decret. Gratian, lib. 5. *Surius Concil. Tom.* 3. *p.* 726.

* *John Stow's Chron. fol.* 182.

* *Decret. Gratiam. lib.* 5. *Matthew Paris Hiſt. Angl. fol.* 393.

King *Henry* the Third finding that many of the *Jews* were converted to the Chriſtian Faith, but yet were notwithſtanding perſecuted by their Bretheren, erected a convenient Houſe and Church, with all neceſſary Accommodations, and called it by the Name of the *Houſe of Converts*, in which Place, if any would live a retired Life, they had all Accommodations granted them for their Lives; which Place continued a Houſe of Alms and Receptacle for the converted *Jews* conſtantly down till 18 *Ed.* 3. and then there proved a Failure of ſuch Converts, and the Place became empty and ruinous; whereupon that Prince, in the eighteenth Year of his Reign, granted the ſame Houſe to other poor People who had nothing

to

to live on, with the Benefit and Accommodation of the Gardens and other Things, and an Alms of 1 *d.* a Day out of the *Exchequer* to each poor Perſon: Which Place one *William de Bunſtal* being made Guardian of, and likewiſe at that time Maſter of the Rolls, afterwards obtained of that King to annex the ſame Houſe and Chapel of the Converts to the Maſter of the Rolls and his Succeſſors for ever. 51 *E.* 3. *m.* 20.

The Conſtitution of this Society (when it was in being) was purſuant to the *Canon Law*; for by that it was decreed, reciting, *That in regard the Companies of evil Men do oftentimes corrupt even the good, how much more then thoſe who are prone to Vices? Let therefore the* Jews, *who are converted to the Chriſtian Faith, have no further Communion henceforth with thoſe who ſtill continue in their old* Jewiſh *Rites, leſt peradventure they ſhould be ſubverted by their* Jewiſh *Society.* Therefore *We decree, That the Sons and Daughters of thoſe* Jews *who are baptized, and that do not again involve themſelves in the Errors of their Parents, ſhall be ſeparated from their Company, and placed with Chriſtian Men and Women fearing God, where they may be well inſtructed, and grow in Faith and Chriſtian Manners.* And further by the ſame Council it was decreed, *That if a* Jew *ſhould have a Wife converted to the Faith, they ſhould be divorced, unleſs upon admonition the Huſband would follow.* 4 *Concil. Toledo, Can.* 59. 61, 62. *Grat. Diſt.* 28. *qu.* 1. & 29. & *qu.* 1.

IX. However, theſe People having got footing for their Perſons, ſoon obtained Licence notwithſtanding againſt the expreſs Canons, not only for the erecting of Synagogues, but alſo obtained a Charter, whereby was *granted to one* James *of* London, *a Jewiſh Prieſt, the* *Rot.* 1. *Reg. Johannis, part* 1. *m.* 28. *Chart.* 17. *Vide* the ſame at large, 2 *Inſt.* 508.

Prieſthood of all the Jews *throughout all* England, "to have and to hold it during his Life freely, quietly, honourably and intirely, without Moleſtation, Trouble or Diſturbance by any Jew or Engliſhman in the Exerciſe thereof, *&c.*" And in the very cloſe of the ſame there is alſo granted, "That he ſhould not be impleaded for any Thing appertaining to him, but only before the King himſelf, or his Chief Juſtice." This Charter was made at *Roan*, from whence the Conqueror firſt tranſplanted theſe People into this Realm.

X. And though they obtained footing in moſt of the great Places of *England*, yet ſome there were who obtained ſuch favour, as to be exempted of their Company, as *Newcaſtle*, to which Corporation it was granted, That no *Jew* from thenceforth ſhould remain or reſide in their Town during the Reign of King *Henry* the Third, or his Heirs; ſo likewiſe they of *Southampton*, *Winchelſea*, *Wicomb*, *Newberry*, *Berkhamſted*, and other Places.

Clauſ. 18 *Hen.* 3. *m.* 16. *Vide Chart.* 18 *H.* 3.

If a *Jew* died and left an Infant, the Houſe did eſcheat to the Crown, until the ſame was redeemed by the Heir at full Age, and in the *interim* the King might grant the ſame till he came of Age, together with all his Goods, Chattels, Lands, Tenements and Hereditaments, and then upon Payment of their Fines, they had a ſpecial Writ of Reſtitution awarded to give them actual Poſſeſſion.

Clauſ. 5 *H.* 3. *m.* 17. *de dom. Judæorum.*

XI. By the Laws of *England*, if a Man died, leaving Iſſue divers Sons, the Lands deſcended to the eldeſt; but a *Jew* dying, leaving Iſſue divers Sons, after the Fine paid to the King, they all inherit Lands, Goods, and Chattels in a kind of *Coparcenary* *. So likewiſe by the Law of the Realm, if a *Jew* died

Selden. de ſucceſſionibus apud Hebræos, c. 20.

* But that was by the Eſtabliſhment of

died seized of Lands, his Wife could not by the *Common Law* bring a Writ of Dower; yet she might bring a Plaint before the Justices assigned for the *Jews* in the Nature of a Writ of Dower, and should there recover, nevertheless subject to answer the King a Fine, nay though the Husband was converted to the Christian Faith †. the Justices appointed for the *Jews*.

† *Cok.* 1 *Inst. fol.* 31, 32.

Clauſ. 28. *H.* 3. *m.* 4. *dorſo. Clauſ.* 36 *H.* 3. *m.* 26. *pro quædam Judæa.*

The Power of Excommunication was granted the *Jews* to excommunicate any of their own Profession; but the same could not be done by them without Licence. *H.* 3. *m.* 3.

XII. Notwithstanding all these Privileges and indulged Liberties which were granted to them by those Kings from the Conqueror to that their fatal Year in 18 *E.* 1. yet they were in no other Condition but most absolute Bond-slaves, and exquisite Villains, for their Names were enrolled in the King's *Exchequer* for the *Jews*, and they confined to live and abide only in such Places as those several Kings, or their Justices assigned for their Custody, should prescribe and allot them, from which they might not remove without special Licence, but always be resident, that so the King's Officers might on all Occasions find both them and their Families, and then as often as the King's Pleasure was, were they translated from Place to Place, and not suffered to have any Habitation but where they had a common Chest, and where Taxes were imposed on them, or Debts were owing from them to the Crown, their Persons, Wives, Children, Infants, Families were imprisoned and sent to remote Places and Castles, nay banished, executed, and put to Fines and Ransoms upon all such Occasions as those 36 *H.* 3. *m.* 6.

Kings thought fit; they were ſold either Perſon by Perſon, or in wholeſale, as Bondſlaves or Villains in groſs by the King, and mortgaged to thoſe who would accept them as a Pledge, or otherwiſe advance any Monies upon their Aſſignment.

2 Clauſ. 2 H. 3. m. 10. dorſ. XIII. And that they might be diſtinguiſhed from others, they were obliged always to bear a Badge and Table on their outmoſt Garments, as well Females as Males, wherever they rode or went, to diſtinguiſh them from Chriſtians, with whom they were to have no intimate Communion, nor could the Chriſtians be Servants or Nurſes to the *Jews* in any kind, their State and Condition being ſuch, that they were all of them mere Slaves and Servants to the King in one kind or other.

When they had entered the Realm, they were abſolutely prohibited to depart without ſpecial Licence; the which they hardly and but ſeldom could obtain, and if they attempted it, the which they ſometimes would do to avoid the heavy Taxes that were laid on them, they were impriſoned and put to ſevere Fines and Ranſoms.

Clauſ. 15 Joh. memb. 13. Fine 7. H. 3. mem. 2. part 1. Ebor. XIV. As for their real and perſonal Eſtate, it was wholly at the Diſpoſal of the King; for he might ſeize all their Lands, Houſes, Rents, Annuities, Fees, Stars, Mortgages, Debts, Goods and Chattels whatſoever, and ſell, grant, releaſe, and give them to whom he pleaſed at his Pleaſure.

Clauſ. 5 H. 3. m. 17. de dom. Judæorum. At their Deaths their whole Eſtate, both Real and Perſonal, eſcheated to the King; neither could their Heirs or Executors, Wives and Kindred, have or enjoy them without making Fines, Releaſes, and Compoſitions, with the King for them.

And

And when they had Occaſion to ſue or implead any Perſon upon any Account, Real or Perſonal, they could not proceed till Licence obtained, which always was upon Fines made; and thoſe very Actions, after they were commenced, he could ſtay, and the very Debts which they proſecuted for, he might reſpite Payment of Principal or Intereſt, and give what Time he pleaſed; nay, he could not only lower or leſſen the Sums mentioned in their ſeveral Charters, but he might releaſe them for ever; and though the King might pardon or releaſe a Debt, yet he might notwithſtanding revive * the ſame. And thoſe publick Cheſts, the common Repoſitory of all their Fortunes, they often ſeized and ſealed up the ſame, and diſpoſed what of them they pleaſed to the King's own Uſe, notwithſtanding their Charters and Grants of Privilege, nay, forced them ſometimes to tax and diſtrain one another, under Pain of perpetual Impriſonment, Baniſhment, Confiſcation of all their Eſtates, and the moſt ſevere Penalties that could be inflicted, they living purely under an unceſſant and arbitrary Will of thoſe ſeveral Kings; and that which was the more to be admired, that if they turned Chriſtians, they immediately upon their Converſion forfeited all their Eſtates to the Crown. At length King *Edward* the Firſt, having ſought all ways that might be to reform the exhorbitant Uſuries and Oppreſſions which they daily committed, did, through the earneſt Sollicitation of the Commons, publiſh an Edict in Parliament for their total and univerſal Baniſhment, which accordingly was done, and the King at that Time ſent his Letters and Letters Patents to ſeveral Sea-Towns, reciting,

Clauſ. 7. *Johan. Reg. m.* 26.

Clauſ. 9. *Johan. Reg. m.* 5, & 6.

* *Clauſ.* 35 *H.* 3. *m.* 5. *dorſ.*

Hillar. An. 52. *H.* 3. *Rot.* 9. in the Exchequer.

that he had preſcribed a certain Time for their Departure out of the Realm, commanding them not to do, nor ſuffer any Wrong to be done them, but to grant them ſpeedy Paſſage at their own Coſts and Charges. After which prefixed time, if they were found reſiant within the Realm, they were hanged *, and ſome of the Rents and Profits of their Houſes were diſpoſed to pious Uſes, but all were generally ſeized into the Crown, and diſpoſed and ſold to the *Engliſh* by ſeveral Grants and Sales, under the Great Seal of *England*. Thus theſe People, having by their extraordinary Uſury, Extorſions, and Oppreſſions, reduced themſelves to be deſpiſable, and then baniſhed, and that by a People too, with whom, if they had continued in Love and Friendſhip, and improved their Fortunes by the Rules of Moderation, they in all Probability might have continued and flouriſhed, they having from the ſeveral Kings, from the Conqueror down to their fatal Year, as many large Patents of Liberties and Franchiſes granted them, as ever were granted by any Chriſtian Prince or State ſince the Extirpation of their Commonwealth.

But notwithſtanding this, yet Commerce and Traffick having now taught them a more exquiſite way of enriching themſelves, than by that cruel and biting Trade of Uſury, they have now got Footing into the Realm, and do now flouriſh in as high a manner as of old, (though it is hoped, not in that manner for which they juſtly procured their total Baniſhment out of the ſame) and ſince Time hath been ſo kind to them, as to deſtroy thoſe Rolls and Monuments of their former Cruelties and Oppreſſions, and where their Baniſhment

* *Inſtit.* 507.

* *Matth. Weſt. Flor. Hiſt. An.* 1290. *part* 2. *fol.* 381.

In the 20th Year of *Ed.* 1. there endorſed, *Chartæ de Judaiſma Literæ Patentes de domibus Judæorum conceſſis poſt eorum exilium de Anglia*, above an hundred particular Patents of the Sale of their Houſes.

niſhment was recorded (there being no other Footſteps of the ſame, nor of any other before 5 *Ed.* 2. to be found, they being totally loſt; yet there are other Records that have ſufficient Recitals of the ſame, as well as Hiſtory to evince the Truth, if in the leaſt contradicted) it is hoped, that if they continue in the Realm, that they will by their conſtant Actions conſult and do ſuch things as may ſtand with the Honour, Juſtice, and Good of the Kingdom.

Jews taking the Oaths, may omit ſome Chriſtian Expreſſions.

By Stat. 13 *Geo.* 2. *c.* 7. *Sect.* 3. Whenever any Jew ſhall preſent himſelf to take the Oath of Abjuration, in purſuance of this Act, the Words *upon the true Faith of a Chriſtian* ſhall be omitted.

Jewiſh Parents to allow their Proteſtant Children fitting Maintenance.

By Stat. 1 *Ann. Sect.* 1. *c.* 30. If any Jewiſh Parent, in order to the compelling his Proteſtant Child to change his Religion, ſhall refuſe to allow ſuch Child a fitting Maintenance, ſuitable to the Ability of ſuch Parent, and the Age and Education of ſuch Child; upon Complaint, it ſhall be lawful for the Lord Chancellor to make ſuch Order for the Maintenance of ſuch Proteſtant Child, as he ſhall think fit.

A Jew's Daughter turned Proteſtant; the Jew died leaving ſeveral Legacies in Charities, and his perſonal Eſtate to his Executor, but nothing to his Daughter; ſhe petitioned the Lord Chancellor *Parker* for a Maintenance, upon the Statute of Queen *Anne*; it was objected, that ſhe was forty-five Years old, and ſo the Care of her Education over. 2dly, that ſhe is married, and not now to be called a Child, but to be provided for by her Huſband. 3dly, that the Parent is dead, and cannot be ſaid to have refuſed, and therefore the

the Power given by the Act is at an End. But Lord Chancellor *Parker* ſaid, that he inclined ſtrongly to think this Caſe to be within the Act, for ſeveral Reaſons there mentioned by him, and that poſſibly the Charities given by the Will may be under ſome ſecret Truſt for the Child if ſhe ſhould turn Jew, and therefore directed that the Maſter inquire into it, *Wil.* Rep. 524. *pl.* 149. *Black.* Com. 439.

CHAP. VII.

Of Merchants.

I. *Merchandizing, the ſame is honourable and profitable both to Prince and State.*

II. *The Advantages that might accrue to Kingdoms, if the more noble and richer ſort applied themſelves to the ſame.*

III. *Of the firſt Inſtitution of the Company of Adventurers.*

IV. *Of the Inſtitution of that in* England *to the* Indies.

V. *Of the forming of that in* Holland, *to thoſe Parts.*

VI. *Of the forming the like by the moſt Chriſtian King to the ſame Parts.*

VII. *Of the Advantages and Diſadvantages conſidered, in reference to reducing them to Companies.*

VIII. *How Merchants in* England *were provided for of old.*

IX. *Of their Immunities ſettled by* Magna Charta.

X. *Of Merchant Strangers, whoſe Prince is in War with the Crown of* England, *how to be uſed in time of War, and the Reaſons why Merchant Strangers ought to be uſed fairly.*

XI. *Goods brought in by them, the Monies raiſed, how to be diſpoſed, according to the Statute of Employment.*

XII. *Merchant-Strangers, made Denizens by Parliament,*

ment, or Letters Patents, to pay as before they were ſo made.

XIII. *What things requiſite that make a competent Merchant according to Law.*

XIV. *One Merchant may have an Account againſt his Partner, and if he dies, no Survivorſhip to be of the Eſtate belonging, or acquired in their Traffick.*

XV. *Of the Immunities which they claim by the Cuſtom of Merchants, in reference to Exchange.*

XVI. *All Subjects are reſtrained to depart the Realm but Merchants.*

XVII. *Prohibitory Laws bind Foreigners according to the Leagues of Nations.*

XVIII. *The Neceſſity and Advantage that is incumbent on Merchants to preſerve their Marks.*

1. THERE are certain Affairs which ſhould be left to the poor and common People to enrich them, but there are others which they only can execute which are rich; as that at Sea by way of *Merchandizing*, which is the moſt profitable in an Eſtate, and to the which they ſhould attribute more Honour, than ſome do here at this Day. For if in all Eſtates, they have thought it fitting to invite the Subjects by Honour to the moſt painful and dangerous Actions, the which might be profitable to the Publick, this being of that Quality, that they ſhould attribute more Honours to thoſe that deal in it: And if *Nobility* hath taken its Foundations from the Courage of Men, and from their Valour, there is certainly no Vocation in the which there is ſo much required as in this; they are not only to encounter and ſtrive amongſt Men, but ſometimes againſt the four Elements together, which is the ſtrongeſt Proof that can be of the Reſolution of Man. This hath been the Occaſion, that ſome have been of Opinion, that they ſhould open this Door to

Præter mercaturæ uſum Naves rei militari & tutandæ in mari contra externam vim reipub. inſervire cæperunt, Ariſtot. 7. *Polit.* 6. Mare & claſſem in

to Merchants to attain to *Nobility*, ſo as the Father and Son have continued in the ſame Trade, and to ſuffer Noblemen, who are commonly the richeſt in Eſtates, to practiſe themſelves (without Prejudice to their Condition) in this of Commerce; the which would be more honourable unto them than to be Uſurers and Bankers, as in *Italy*; or to impoveriſh themſelves in doing nothing but ſpend, and make Conſumption of their Fortunes, and never gathering or laying up.

bello eſſe tutelam reipub. *ait Tacitus 5. Hiſt. Claſſes Imperii munimenta vocant Athenienſium legati apud Thucididem, lib. 1. H. Orat. ad Lacedæmon. fortunas Greciæ in navium præſidio ſitas fuiſſe prædicant, ejus rei muri lignei* Themiſtoclis *abunde fidem fecerunt, idem experientia ſatis hodie loquitur, Inde* Coſmo Medicæo *familiare fuit dictum,* Non habendum potentem qui potentiæ terreſtri, non ſimul etiam navalem haberet conjunctam. *Et Hiſpanorum eſt adagium,* Regnum ſine portu eſſe ſicut furnum abſque igne: *Præterquam quid navigationes cultui vitæ, & artium traductioni Coloniarium valetudine, & voluptati ſerviunt.*

The moſt uſual way of buying and ſelling of Commodities, between Merchants beyond Seas, is by Bills of Debt, or Obligatory, called Bills Obligatory, which are there by the Law Merchant Alienable or Aſſignable, tho' not by our Law, as being held as *choſes en Action*, where no Property can paſs by Aſſignment or Alienation, though certainly it would be of great Convenience, were they by Act of Parliament made aſſignable, as, by Cuſtom, their Bills of Exchange are by Endorſement. *Lex. mercat.* 71.

The Form of ſuch a Bill Obligatory.

I, *A. B.* Merchant of *Amſterdam*, do acknowledge by theſe Preſents to be truly indebted to the honeſt *C. D. Engliſh* Merchant dwelling at *Middleborough*, in the Sum of 500*l.* currant Money for Merchandize, which is for Commodities received of him to my Contentment; which Sum of 500*l.* as aforeſaid, I do promiſe to pay unto the ſaid *C. D.*

(or

(or the Bringer hereof) within Six Months next after the Date of theſe Preſents. In Witneſs whereof, I have ſubſcribed the ſame at *Amſterdam*, the 10th Day of *July* 1704. *Stilo novo*. Sometimes, and in ſome Countries, this Bill is ſealed. And if ſuch Bill be made beyond Seas, by 2, 3, or more Perſons, as having bought a Commodity as Partners together, or taking up Monies together at Intereſt; wherein they bind themſelves all as principal Parties or Debtors, yet every one is bound to pay but his own Part, by the *Civil Law*, and Cuſtom of Merchants. *Lex. Mercat.* 74, 75.

Merchants ought to be very wary and circumſpect in their giving a Character one of another, as to their Credit in their Dealings as to each others Ability, leſt unawares they become Sureties, where not ſo much is intended. To which end I ſhall cite a Caſe in *Lex Mercat. cap.* 10. *fol.* 69. which was this. A Merchant being at *Franckfort* in *Germany*, during the Mart-Fair there, went into a Merchant's Warehouſe to confer of ſome Buſineſs with him, where he found another Merchant of his Acquaintance cheapening a Parcel of Silk Wares of the ſaid other Merchant, to whom this Man (as it ſeemed) was unknown; whereupon the Seller of the ſaid Silk Wares took occaſion to aſk of him, whether he were a good Man, and of Credit, who anſwered he was. So the Bargain was made, and the Goods delivered to the ſaid Merchant, the Buyer, to the Value of 460 *l.* For the which he made a Bill Obligatory, payable the next Fair following; at which time the Buyer not appearing, Demand was made of the Merchant that gave the Buyer the Character of being a good Man, and of Credit, who Surety, tho' not intended.

who in his Defence did alledge, that what he ſaid was but only a bare Character, and at moſt was but *Nudum Pactum ex quo non oritur Actio*, and ſo not bound to pay the ſame, as having had no Conſideration for it: And upon Suit thereupon, he was adjudged to pay the ſaid 460*l.* All he had for a Recompenſe to reimburſe himſelf, was the Buyer's Bill Obligatory made over to him, which proved of no Avail, for that the Buyer became inſolvent. Note, this was by the *Civil Law* and general Law and Cuſtom between Merchants. Though I conceive this would not in any wiſe avail in our Law, but thought fit to add this Caſe as a Caution to Merchants. If he had ſaid, he is taken or reputed to be a Man of good Credit, or, I take him to be ſo, he had been cleared by the Law, and the Cuſtom of Merchants.

Action of Debt was brought by a *Conceſſit ſolvere*, according to the Law Merchant, and the Cuſtom of the City of *Briſtol*, *Godbolt*. 49.

Two Partners one makes a Factor.

If two Men be Partners of Merchandize in one Ship, and one of them appoints and makes a Factor of all the Merchandizes, both of them may have Writs of Account againſt him, or they may join in one Writ, *Tamen quære*, *Godbolt*. 90. *Faſhion cont. Atwood.*

Account by one joint Factor for the other.

One joint Factor may account without his Companion by the Law of Merchants, for Factors are oftentimes diſperſed, ſo as they cannot be both preſent at their Accounts. *Goore & als cont. Dawbeny*, 2 *Leon.* 75, 76.

Sale by a Factor, to one that becomes Bankrupt.

A Merchant delivered *Kerſies* to be ſold in *Spain*, the Factor ſells them to one who becomes a Bankrupt (and there is a Law in *Spain*, that if the Factor enter this before a Regiſter, and had a Teſtimonial, that he ſhall be diſcharged)

charged) we judge here that he ſhall be diſcharged. In *Capps* and *Tucker's Caſe*. 2 *Rolls. Repts.* 497.

Account for Goods received *ad Mercandizandum* is good by Ch. Juſt. *Hales*. And though declared againſt as Receptor general, yet ſhall not anſwer other Profits, and ſhall have Charges as a Bailiff. *Burdet cont. Threele*. 3 *Keeble* 387. Account againſt him.

If a Servant or Factor buy Goods generally, and doth not upon the Contract declare that he only buyeth as Servant or Factor, he is chargeable in his own Right. *Degelder* againſt *Savory*. 2 *Keeble* 812. Factor buys generally.

In Account it was held *per Curiam*, that if a Man delivers Money to his Bailiff or Factor to lay out for him in Commodities, he cannot bring an *Aſſumpſit*, but only an Account; for it may ſo happen, that the Factor hath laid out more Money than he hath received. Where Account, not *Aſſumpſit*, lies againſt a Factor. 1 *Vent.* 113.

Indebitatus Aſſumpſit for 1000 *l.* for Monies had and received, and alſo an *Inſimul computaſſet*, upon Account; the 1000 *l.* became due; the Defendant pleaded the Stat. of Limitations. The Plaintiff replied that he is a Merchant, and the Proviſo and Exception for Merchants Accounts. By *Twiſden, Rainsford & Moreton abſente Kelyng*, ſtated Accounts between Merchants as this Caſe is, are not within the Proviſo, but only Accounts Currant, *Webber cont. Tyrell*. 1 *Levinz* 287. 2 *Keeble* 622. 2 *Sand.* 124. Where Judgment for the Defendant. Yet the Caſe of *Martin* and *Delboe*, 1 *Levinz* 298. to the contrary upon an Account ſtated between Merchants; yet the ſame Caſe, 1 *Mod.* 70. Judgment for Defendant, 2 *Keeble* 674. 1 *Vent.* 89. & 1 *Sid.* Merchants Account *Stat.* of *Limit.* pleadable. 2 *Keb.* 696.

Sid. 465. See likewiſe the Caſe of *Farrington & Lee.* 1 *Mod.* 268. & 2 *Mod.* 311.

II. Hence will grow many Advantages both to the Publick and Private: To the Publick, for that they that ſhould deal in Commerce, having Means, Courage, and Sufficiency for this Conduct, it would be far greater in the furniſhing more Ships to Sea, and better armed, the which the State at need might make uſe of for the Safety of the Publick, and would add to the Reputation of the Nation in all Parts, they knowing, that an Indignity or Damage offered to ſuch, would require Satisfaction with a ſtrong and powerful Hand; the which they cannot do, who being poor, and having but ſmall Stocks, or what they borrow from Bankers, or are indebted for the Cargo which they ſend forth, have not the Courage to hazard themſelves and their All in an Enterprize that is great. Beſides, ſuch who have Honour, Riches, and Courage, would keep up the Reputation of their ſeveral Commodities, by not leſſening the Market, whereas the *poorer ſort, (to pay Cuſtoms, Freight, Bills of Exchange, and other contingent and neceſſary Charges,* which accompany the importing and exporting,) are often forced to ſell for an inconſiderable Gain; nay, ſome rather than their Wants ſhould be known, will for ready Money ſell their Goods for even leſs than they coſt: All which would be prevented, if ſuch Perſons of Value would apply themſelves to a prudent Management of the ſame; for whatſoever Hazard they run, there would be more gotten by ſuch in two, than by the poorer ſort in three or four Voyages, and by that means it would be the Occaſion of avoiding many Expences, and pre-

prevent the importuning their Prince for Places, when perhaps they might get more at Sea in one year, than in ten at Court. Beſides, Experience hath taught, and doth daily manifeſt, that where the moſt Subſtantial have dealt in Commerce, it hath inriched both them and the State under which they lived; and this preſent Practice of the *Venetians*, *Portugueze*, *Spaniards*, and *Hollanders*, plainly demonſtrates.

Stat. 9, 10 *W.* 3. *c.* 15. Of ending Suits by Arbitrament. After the 11th of *May* 1698. All Merchants and Traders and others, deſiring to end any Controverſy, Suit or Quarrel, for which there is no other Remedy but by perſonal Action or Suit in Equity, by Arbitrament may agree, that their Submiſſion of the Suit to the Award or Umpirage of any Perſon or Perſons ſhould be made a Rule of any of his Majeſty's Courts of Record, which the Parties ſhall chuſe, and may inſert ſuch their Agreement in their Submiſſion, or the Condition of the Bond or Promiſe; and upon producing an Affidavit of ſuch inſerting, and upon Reading and Filing ſuch Affidavit in the Court ſo choſe, the ſame may be entred of Record, that the Parties ſhall ſubmit to, and finally be concluded by ſuch Arbitration or Umpirage. And in caſe of Diſobedience thereto, the Party neglecting or refuſing, ſhall be ſubject to all the Penalties of contemning a Rule of Court, and Proceſs ſhall iſſue accordingly, which ſhall not be ſtopped or delayed, unleſs it appear on Oath, that the Arbitrators or Umpire miſbehaved themſelves, and that ſuch Award was corruptly or unduly procured. In which caſe ſuch Arbitration or Umpirage ſhall be void and ſet

Arbitrament, made a Rule of Court. This Statute does not extend to Submiſſion by Rule of *Niſi Prius*. *Stra.* 301. ſee 2 *Bur.* Rep. 701.

aſide by any Court of Law or Equity, ſo as ſuch Corruption or undue Practice be complained of, in the Court where the Rule is made for ſuch Arbitration, before the laſt Day of the next Term, after ſuch Arbitration made and publiſhed to the Parties.

Which Clauſe may be to the Purpoſe following, at the End of the Condition. *viz.* And the abovementioned *A. B.* doth agree and deſire, that this his Submiſſion to the Award above-mentioned be made a Rule of His Majeſty's Court of King's Bench, purſuant to the late Act of Parliament, for this Purpoſe provided.

The like for the other Party ſubmitting to ſuch Award.

Salk. 72. *pl.* 8. A Submiſſion was to an Award by Bond, and at the End of the Condition of the Bond was this Clauſe: *And if the Obliger ſhall conſent that this Submiſſion ſhall be made a Rule of Court, that then,* &c. Upon motion to make this Submiſſion a Rule of Court, it was oppoſed, becauſe theſe Words do not imply his Conſent; but if he would forfeit his Bond, he need not let it be made a Rule of Court, yet becauſe this Clauſe could be inſerted for no other Purpoſe, the Court took theſe conditional Words to be a ſufficient Indication of Conſent, and made the Award a Rule of Court.

Lord *Raym.* 674. *Com. Rep.* 114. *pl.* 75.

Salk. 73. *pl.* 10. 7 *Mod.* 8. A Matter was referred by Conſent at *Niſi prius* to the three Foremen of the Jury; and before the Award was made, one of the Parties ſerved the Arbitrators with a *Subpœna* out of *Chancery*, which hindered their proceeding to make the Award. And the Court held this a Breach of the Rule, and granted an Attachment, *Niſi Cauſa.*

Upon

Upon a Submiſſion to the Award of the three Foremen of the Jury, who made their Award, the Defendant moved to ſet it aſide; becauſe they went on without giving him Time to be heard, or produce a Witneſs: And *Holt* Chief Juſtice ſaid, the Arbitrators being Judges of the Parties own chuſing, the Party ſhall not come and ſay they have not done him Juſtice, and put the Court to examine it: *Aliter*, where they exceed their Authority: however, the Award was examined and confirmed, and the Plaintiff moved for an Attachment for not performing it, and the Court held, that the Non-performance, while the Matter was *Sub Judice*, was no Contempt: Then the Plaintiff moved for his Coſts, and that was denied; upon which *Powel*, Juſtice, ſaid, that ſeeing they could not give the Party any Coſts, he ſhould never be for examining into Awards again. *Salk.* 73. *pl.* 11. Lord *Raym.* 857. This Motion will not be received before the Submiſſion be made a Rule of Court. 2 *Str.* 1178.

But Awards have been frequently ſet aſide, eſpecially in Equity, where the Arbitrators have appeared to have been miſtaken, or have been guilty of Corruption or Partiality; as if they have an Intereſt in the Thing in Controverſy. So where there are three Arbitrators, and two of them by Fraud or Force exclude the other. So where they awarded 495*l.* againſt one of the Parties, for calling the other, who was a Butcher, a *Bankrupt Knave*, to repair his Honour, as they called it. So where the Submiſſion was to Arbitrators, and they had Power to chuſe an Umpire, which they did, by throwing *Croſs* and *Pile* who ſhould name him, and for this the Court ſet aſide the Award. *Bac. Abr.* 135. in *Marg.*

Bill to ſet aſide an Award made purſuant to a Rule of Court in *B. R.* for Miſbehaviour

in the Arbitrators upon this Caſe. The Plaintiff and Defendant entered into Arbitration Bond, and ſubmitted to make it a Rule of Court; but the Plaintiff, not liking the Award, applied to the Court of *B. R.* to ſet aſide the Award, and made ſeveral Objections to it; and the Court being divided in Opinion, a Rule was made to hear Counſel, why the Award ſhould not be ſet aſide, and afterwards that Rule was diſcharged; but the Court being divided in Opinion, the Plaintiff could not obtain a Rule for Non-performance of the Award, and therefore brought an Action upon the Abitration Bond, and got Judgment upon it; and then *Ward* the Defendant at Law brought this Bill to be relieved againſt the Award. The Queſtion was, Whether the Plaintiff at Law, not having purſued the Method preſcribed by Stat. 9 *W.* 3. *c.* 15. by Attachment, but has brought an Action upon the Arbitration Bond at Common Law, and has not pleaded the Statute to the Juriſdiction of this Court; whether, upon theſe Circumſtances, the Court may not proceed to examine the Awards. The Council for the Defendants inſiſted, that the Award being made by a Rule of Court, purſuant to the Stat. 9 *W.* 3. *c.* 15. and ſet out to be ſo made by Defendant's Anſwer, and the Defendant ought to have the Benefit of the Statute, as well as if he had pleaded it, and the Parties to the Award have no Remedy but by Application to the Court where the Rule was made; that this Statue was pleaded to the Juriſdiction of this Court *tempore Cowper*, C. and the Plea was allowed. Ordered, that the Maſter ſhould make a State of the Caſe for the Reſolution

Reſolution of the Court. 3 *Vin. Abr.* 134. *pl.* 18.

When Submiſſion to an Award is by Bond, which is afterwards made a Rule of Court, the Court will allow the ſame Objection to the Award, as they would do when the ſame came before them on an Action on the Bond; otherwiſe there might be a Contradiction; but when a Submiſſion is only by Rule of Court, that Court will not receive Objections to it; for it is the ſame as if the whole had been in the Rule; and the Court will not relieve when the Matter has been examined by another Court that had Juriſdiction, unleſs the Equity be, that ſome Matter of Fraud in the Award hath come to the Knowledge of the Party ſince the former Examination, which did not appear before the other Court; *per* Lord Chancellor, who had taken formerly the ſame Diſtinction in *B. R.* 3 *Vin. Abr.* 134. *pl.* 19.

H. bound himſelf in a Bond to ſtand to the Award of *J. S.* which Submiſſion was made a Rule of Court. The Party, for whoſe Benefit the Award was made, moved the Court for an Attachment for *Non-performance*, which was granted; pending that, he brought an Action of Debt upon the Bond; upon this Serjeant *Darnell* moved, that he might not proceed both ways; and likened it to the Caſes, where the Court ſtays Actions on Attorney's Bills, while the Matter is under Reference before the Maſter. *Sed per Curiam*, the Motion was denied, and this Difference taken; where the Court relieves the Party by way of Amends in a ſummary way, as in the Caſe cited, there it is reaſonable; otherwiſe here, where the Plaintiff has no Satisfaction

Salk. 73. *pl.* 12. 10 *Mod.* 333. S. P. but ſee 3 *Vin. Abr.* 134. *pl.* 17. in Marg.

tisfaction upon the Attachment, and the Defendant was put to anſwer Interrogatories.

Salk. 83. *pl.* 1. Motion was made for an Attachment for Non-performance of an Award, and *per cur.* here *muſt be a poſitive Affidavit of perſonal Notice of Award and Demand of the Money all at one Time*, becauſe it brings the Party into Contempt, but if the Party *keeps out of the way on purpoſe*, there muſt be an Affidavit thereof, and of *Endeavour* uſed *to find him out and ſerve him*, and it is but of late that Attachments have been the means to compel the Performance of Awards, but the old remedy, was Caſe, 12 *Mod.* 257. 3 *Vin. Abr.* 132 in *Marg.*

Attachment lies not for not performing an Award made upon a Rule of Court without a Perſonal Demand. *Holt*, Chief Juſtice, remembered the firſt Attachment of this kind was in Sir *John Humble*'s Caſe in *Kelyng*'s Time, in which, and ever ſince, a perſonal Demand has been thought neceſſary. In ſuch Caſes of Awards, though they be not legally good, an Attachment lies for Non-performance, *aliter*, if impoſſible: but the Party is excuſed as to that Part which is impoſſible only.

Salk. 84. *pl.* 3. If a Rule be made at *Niſi prius* to refer a Matter to the three Foremen of the Jury, and that the Plaintiff may either enter upon Judgment on the Verdict, or have an Attachment for not obeying the Rule of Court, it being in his Election which way he will execute the Award; and this was affirmed by Mr. *Northey*, and at the Bar, to be the conſtant Practice. *Tourton* and *Gould* (in the Abſence of the Chief Juſtice) doubted of it, becauſe the Verdict ſtood ſtill on Record; to which Mr. *Northey* anſwered, there could not be a Judgment entered on ſuch Verdict without Leave of the Court: And the Attachment was granted.

Rule made upon a Witneſs to a Submiſſion to an Arbitration, to make an Affidavit of the Execution. 10 *Mod.* 332. *Stra.* 1.

Where

Where a Rule is entered into by Conſent to refer a Matter to the Judge of Aſſize, there needs no Motion to make his Order a Rule of Court, for the former Rule gives it a Sanction. 3 *Vin. Abr.* 132. *pl.* 7.

Upon the ſame Point being moved, *Holt*, Chief Juſtice, ſaid, that where a Matter is referred to Arbitrators by Rule of Court, and they make their Award, we will compel a Performance of it as much as if the Award were Part of the Rule, and ſo a new Rule is needleſs. *id. ib.* in *Marg.* Note, the conſtant Practice is to make the Rule at *Niſi prius* a Rule of the Court above, which is always granted on Motion. *Bac. Abr.* 134.

The Court was moved to make a Submiſſion a Rule of Court, but denied, becauſe the Affidavit ſet forth, that the Award was then made purſuant to the Submiſſion, and the Award was then produced, and *Trevor*, Chief Juſtice, ſaid, that ſince the Award was made, they would not make the Submiſſion a Rule of Court without ſeeing the Award, whether it was a good and legal one. 3 *Vin. Abr.* 133. *pl.* 12.

III. To engage Perſons of Rank and Fortune in Trade, that induſtrious Nation the *Burgundians* procured the Aſſociation or Incorporation by *John* Duke of *Brabant*, of that antient Company of the Adventurers, *anno* 1248. which were then called the Brotherhood of St. *Thomas Becket* of *Canterbury*; which being afterwards tranſlated into *England*, was by *Edward* the Third confirmed, and by his Succeſſors *Henry* the Fourth, *Henry* the Fifth, *Edward* the Fourth, *Henry* the Sixth, *Richard* the Third, and King *Henry* the Seventh, who gave them the Name of Mer-

chant-Adventurers, and from him ſucceſſively hath their Charter been confirmed down to, and by his late ſacred Majeſty King *George* the *Second*; and as this Society is of ancient Eſtimation, ſo is their Government very commendable.

IV. The Society of the Company trading to the *Eaſt-Indies*, differs from others, both as in reference to the Perſons and Members, which are at this Day many of the principal Nobility of *England*, as alſo for that their Adventurers run all into many Stocks, and is governed and carried on jointly upon Benefit and Loſs; they were incorporate, *anno* 1599. and ſince they ſurrendered their Charter, and accepted a new one, and are incorporated by the Name of *Governor* and *Company trading to the* Eaſt Indies; their Adventurers run all into one *general Stock*, and is governed and carried on upon Benefit and Loſs; the ſame being at this Day, according to the Subſcriptions, about * four hundred thouſand Pounds, which the ſeveral Perſons ſubſcribers may ſell, transfer, and diſpoſe of; but they can no ways take out the ſame: The *Great Stock* may be increaſed, if the Company ſhall ſee Occaſion to permit it; but they are very cautious of the ſame, for that the greater the Dividends (1), the more Reputation the Stock bears, which above all things is to be maintained; however, directly upon his own Account, no Perſon can have above Ten thouſand Pound Stock there, nor can he have a compleat Title, till he is made a Freeman of that Society; their Returns are very profitable, and of late very rich, and have many Places of great Importance in *India*, as *Maſulapatan* on the Coaſt of *Coromandel*, *Bombay*, *Surat*, *Fort St. George*, *Bantam*, &c.

* Abundance more at this Time, under *The United Company*. What is ſaid in this Paragraph of the Stock relates to the old Company.

(1) See *Stat.* 7. *Geo.* 3. *c.* 49. *Sect.* 2. in *B.* 2. *c.* 11. *Sect.* 15.

See

See Stat. 7 *Geo.* 3. *c.* 57. whereby the *Eaſt-India* Company is to pay the Government the Sum of eight hundred thouſand Pounds, in Reſpect of the territorial Acquiſitions and Revenues lately obtained in the *Eaſt-Indies*.

V. The *Dutch* having found Relief in their Diſtreſs from the *Britiſh* Shore againſt their powerful Enemy, found alſo a Pattern to carry on Commerce; they not being wanting in the imitating the Incorporation of a Company, trading to thoſe Places which they poſſeſſed in the *Eaſt-Indies*; and therefore in the Year 1602, Leave was granted from the *States* to traffick into thoſe Parts before all others, during the Space of one and twenty Years, the which was granted them, in Conſideration of five and twenty thouſand Florins, which they promiſed to pay to the *States* during the firſt ten Years. Thus reduced all into one Company, *Amſterdam* had one Moiety, *Middleburgh* in *Zealand* a fourth Part, *Delft*, *Rotterdam*, *Horne*, and *Enchuyſen*, had each of them a ſixteenth Part, the whole Stock of this Union amounting to upwards of ſix Millions of Livres, or ſix hundred thouſand Pounds Sterling.

For the Direction of this Trade, and the Intereſts of the Aſſociates, they have eſtabliſhed in either of thoſe Towns, a certain Number of Adminiſtrators, at *Amſterdam* twenty, at *Middleburgh* twelve, in either of the reſt ſeven; and if any one dies, the Chamber of the Place names three, of which either the *States-General*, or the Magiſtrate of the Town chuſeth one.

Thoſe Chambers chuſe ſeventeen among the Adminiſtrators, that is to ſay, *Amſterdam* eight, *Middleburgh* four, *Delft* and *Roterdam* two,

two, *Horne* and *Enchuyſen* two; and the ſeventeen are choſen alternatively, ſometimes at *Middleburgh*, ſometimes at *North-Holland*; the which are called together to reſolve jointly of how many Ships and of what Equipage and Furniture they ſhall make the Fleet, which they mean to ſend, and to what Fort or Coaſt they ſhould go. This Aſſembly is held ſix Years together at *Amſterdam*, and afterwards two Years at *Middleburgh*, and then again at *Amſterdam*; by the Conditions of the Accord the Ships muſt return to the ſame Port from which they parted; and the Spices which are left at *Middleburgh*, and other Chambers, are diſtributed amongſt them by the Weight of *Amſterdam*, and the Chamber which hath ſold her Spices, may buy from other Chambers.

* There are now ſome Variations.

By this Order * they have hitherto continued this Commerce with Reputation, not as ſimple Merchants only, but as if they were Sovereigns, they have made in the Names of the *States*, Alliances with many of the Princes of thoſe Parts; as with the Kings of *Siam*, *Quadoen*, *Patam Johor*, the Heir of *Malaca*, *Borneo*, *Achin*, *Sumatra*, *Baretan*, *Jocotra*, and other Kings of *Java*; they have made themſelves abſolute Maſters of the Iſland of *Amboyna*, but by what Means?— Where they have a Preſident who governs in their Name; at *Banda* they have a Fort for a Retreat, where they muſt deliver the Spices at a certain Price; in *Ternate* they have another a Mile diſtant from that of the *Portugueze*; at *Magniene* they have three; at *Motire* one; at *Gilolo* they have taken that which the *Portugueze* had built; and indeed whatſoever either can, or may conſiſt with their Intereſt

in

in thoſe Parts, they have ingroſſed, and by that means almoſt the Trade of the whole Spices of the *Eaſt*.

VI. So likewiſe the moſt Chriſtian King hath within few Years eſtabliſhed ſuch another trading to thoſe *Eaſtern* Parts.

And in *England* we have ſeveral others, as that of trading to *Turkey*, that of *Africa* to *Guiney*, and ſeveral others, dividing the ſeveral Trades according to the Coaſts and Places where they are appointed, forbidding them to intrench or incroach on each other; ſo likewiſe to all other his Majeſty's Subjects on ſevere Penalties.

VII. Now it is not the dividing of the Trade into Companies that can anſwer the Expectation, but it is the dividing the Trade into Companies, where the Places may bear it; as that to the *Indies*, *Turkey*, *Hamborough*, and ſome others: But to ſome others, as the *Canaries*, *France*, or any of thoſe Places on this Side the Line, it has been conceived the Trade will not anſwer it, but the ſame would be better diſtributed, either into the Trade of voluntary Aſſociations, or ſingle Traders; others perhaps would reſult into Monopolies, if incorporated; however, the Standard Rule is, to know whether the Trade of the Place will bear a Company, or not.

The *Hudſon's Bay* Company made a By-Law, that if any of their Members ſhould be indebted to the Company, his Stock in the Company ſhould be in the firſt Place liable to ſuch Debt, and that they might ſeize and detain it. This was held good in *Chancery*.

It is foreign Trade that is the main Sheet Anchor of us Iſlanders, without which the Genius of all our uſeful Studies, and the which

which renders Men famous and renowned, would make them uſeleſs and inſignificant to the Publick. When Man has fathomed the Bottom of all Knowledge, what is it, if not reduced to Practice, other than empty Notion? If the Inhabitants of this Iſland were learned in all the Languages between the riſing and ſetting of the Sun, did know and underſtand the Situation of all Places, Ports, and Countries, and the Nature of all Merchandize and Commodities, were acquainted with the Order and Motion of all the Stars, knew how to take the Latitude and Longitude, and were perfectly read in the Art of Navigation, to what Purpoſe would all be, if there were no Foreign Trade? We ſhould have no Ships to navigate to thoſe Countries, nor Occaſion to make uſe of thoſe Languages, nor to make uſe of thoſe Commodities; what would this Iſland be without Foreign Trade, but a Place of Confinement to the Inhabitants, who (without it) could be but a kind of Hermits, as being ſeparated from the reſt of the World; it is Foreign Trade that renders us rich, honourable and great, that gives us a Name and Eſteem in the World, that makes us Maſters of the Treaſures of other Nations and Countries, and begets and maintains our Ships and Seamen, the Walls and Bulwarks of our Country; and were it not for Foreign Trade, what would become of the Revenue for Cuſtoms, and what would the Rents of our Lands be? The Cuſtom would totally fail, and our Gentlemen's Rents of Thouſands *per Annum*, would dwindle into Hundreds.

Les advantages de Commerce à la Eaſt-India.

VIII. Merchants in *England* were always favourably provided for by the *Common Law* of

of this Kingdom. By the ancient Laws of King *Alfred* it was provided, *Defendue fuit que nul Merchant-Alien ne hanrafr Angleterre, forſque aur quarter Faires, ne que nul demeuraſt in la terre outer quarante jours: Mercatorum navigia, vel inimicorum quidem quæcunque ex alto (nullis jactata tempeſtatibus) in portum aliquem invehentur tranquilla pace fruantur, quinetiam ſi maris acta fluctibus, ad domicilium aliquod illuſtre, ac pacis beneficio donatum navis appulerit inimica, atque iſtuc nautæ confugerunt, ipſi & res illorum omnes auguſta pace potiuntur.* *Mirour, cap. 1. Sect. 3. Intr. leges Ethel. cap. 2.*

IX. Again, by the Grand Charter of our Liberties, they are provided for in theſe Words: *Omnes Mercatores niſi publicè antea prohibiti fuerint, habeant ſalvum & ſecurum conductum, exire de Anglia, & venire in Angliam, & morari, & ire per Angliam, tam per terram, quam per aquam, ad emendum vel vendendum ſine omnibus malis tolertis per antiquas & rectas conſuetudines, præterquam in tempore guerræ. Et ſi ſint de terra contra nos guerrina & tales inveniantur in terra noſtra in principio guerræ, attachiantur ſine damno corporum ſuorum, vel rerum, donec ſciatur a nobis, vel a Capitali Juſticiario noſtro, quomodo Mercatores terræ noſtræ tractantur, qui nunc inveniantur in terra illa contra nos guerrina; et ſi noſtri ſalvi ſint ibi, alii ſalvi ſint in terra noſtra.* *Magna Charta, cap. 30.*

1. By which it is declared, that all Merchant-Strangers might be publickly prohibited to trade into this Realm, be they in Amity or otherwiſe.

2. All Merchant-Strangers in Amity, except ſuch as be ſo publickly prohibited, ſhall have ſafe and ſure Conduct in ſeven things.

1. To

1. To depart out of
2. To come into
3. To tarry in
4. By Water and Land to go in, and through

} *England.*

5. To buy and ſell.
6. Without any manner of evil Tolls.
7. By old and rightful Cuſtoms.

Addit Canon, Mercatores, quod non tantum de his qui temporarium in hoſtico moram agitant, intelligendum eſt, ſed ut de ſubditis perpetuis; nam & horum vita ab armis aliena: Eſt ac ſub hoc nomine continentur ſimul alii opifices & artifices quarum quæſtus pacem amat, non bellum. Grotius *de Jure belli, lib.* 3. *cap.* 11. § 12.

X. But concerning ſuch Merchant-Strangers, whoſe Prince is in War with the Crown of *England*, if they are found within the Realm, at the Beginning of the War, they ſhall be attached, with a Privilege and Limitation, *i. e.* without Harm of Body or Goods; with this Limitation, until it be known to the King, or his Chief Juſtice*, how Merchants of *England* are uſed and intreated in their Country, and accordingly they ſhall be uſed in *England*, the ſame being *Jus Belli*. But for Merchant-Strangers that come into the Realm after War begun, they may be dealt withal as open Enemies, it being the Policy of *England* ever to entertain Merchant-Strangers fairly. In the 18th Year of *Ed.* 1. in the Parliament Roll, it is contained thus: *Cives* London *petunt quod alieni-geni Mercatores expellantur a Civitate; quia dicantur ad depauperationem Civium*, &c. — *Reſponſio—Rex intendit quod Mercatores extranei ſunt idonei & utiles magnatibus*, &c. *& non habet Concilium eos expellendi.*

However, though great Immunities were granted them, yet they always found Sureties that they ſhould not carry out the Merchandize which they brought in.

XI. And

* That is, the Keeper of the Realm in his Abſence.

Et in Republica maxime conſervanda ſunt jura Belli. *Co.* 2. *Inſtit. fol.* 58.

Rot. Parliam. 18 *E.* 1. *fol.* 4. *num.* 55.

Rot. Vaſcon. 18 *Ed.* 2. *m.* 21.

XI. And at this Day *, if they bring in any Merchandize into the Realm, and ſell the ſame for Monies, they are to beſtow the ſame upon other Merchandizes of *England*, without carrying of any Gold or Silver in Coin, Plate or Maſs out, on Forfeiture; the principal Reaſon of this was, as well to preſerve and keep the Gold and Silver within the Realm, as for the Increaſe of the Manufactures; and the ſame at this Day extends as well to Denizens, ſo made by Letters Patents, as Strangers; however, he may uſe the ſame in Payment to the King's Liege People, without † incurring the Penalty of the Statute of 4 *H.* 4. but yet in Strictneſs of Law, ought not to receive * any Gold in Payment.

* The Law is altered as to this Matter, ſince our Author wrote. *See above, lib.* 2. *ch.* 13. §. 19.

4 *H.* 4. *cap.* 5. 5 *H.* 4. *cap.* 9.

† *Stat.* 17. *E.* 4. *c.* 1. confirmed by 3 *H.* 7. *c.* 8.

* 8. *H.* 6. *c.* 14.

XII. All Merchant-Strangers that ſhall be made Denizens, either by the King's Letters Patents, or by Act of Parliament, muſt pay for their Merchandize like Cuſtom and Subſidy, as they ought, or ſhould pay before they were made Denizens.

11 *H.* 7. *c.* 14. 22 *H.* 8. *c.* 8. 1 *Eliz. cap.* 1. *Co.* 2. *Inſt. fol.* 742. *Leg. unic. Cod. de nund.* & *Alceat. in Leg. mercis* 66. & *in Leg. mercis* 207. *de verb. ſignif.*

XIII. Every one that buys and ſells is not from thence to be denominated a *Merchant*, but only he who trafficks in the way of Commerce, by Importation or Exportation; or otherwiſe in the way of Emption, Vendition, Barter, Permutation, or Exchange, and which makes it his Living to buy and ſell, and that by a continued Aſſiduity, or frequent Negotiation in the Myſtery of *Merchandizing*: But thoſe that buy Goods to reduce them by their own Art or Induſtry into other Forms than formerly they were of, are properly called Artificers, not Merchants: Not but Merchants may and do alter Commodities after they have bought them for the more expedite Sale of them, but that renders them not Artificers, but

C. ejiciens 88. *aiſt.*

Paul de Caſtr. in Leg. cum ſi. de Inſt.

but the ſame is part of the Myſtery of Merchants; but Perſons buying Commodities, though they alter not the Form, yet if they are ſuch as ſell the ſame at future Days of Payment for greater Price than they coſt them, they are not properly called *Merchants*, but are *Uſurers*, though they obtain ſeveral other Names, as *Warehouſe-keepers*, and the like; but Bankers, and ſuch as deal by Exchange, are properly called *Merchants*.

31 E. 3. 7. Co. on *Littlet. fol.* 182. *per Legem mercatoriam jus accreſcendi inter Mercatores pro beneficio commercii locum non habet.*

XIV. The Wares, Merchandizes, Debts or Duties that Merchants have as joint Traders or Partners, ſhall not go to the Survivor, but ſhall go to the Executor of him that is deceaſed (*a*). And the Executor may join in an Action with the ſurviving Merchant, 2 *Levinz* 188. *Hall* againſt *Huffam*.

(a) *Sed Quære*, for it hath been ſince held, that the Executor and Survivor cannot join, for the Remedy ſurvives, though the Duty doth not; and therefore on Recovery he muſt be accountable to the Executor for that. *Martin v. Crump. Salk.* 414.

1 *Vern.* 217.

In Copartnerſhips between Merchants, it is not neceſſary to provide againſt Survivorſhip.

If two joint Merchants occupy their Stock, Goods and Merchandize in common to their common Profit, one of them naming himſelf a Merchant, ſhall have an Account againſt the other, naming him a Merchant; and ſhall charge him as *Receptor* * *denariorum ipſius B. ex quacunque cauſa & contractu, ad communem utilitatem ipſorum A. & B. provenient. ſicut per Legem Mercatoriam rationabiliter monſtrare poterit*, 10 *H.* 7. 16. *a.*

* *Co. Litt.* 172. *lib. Intrat.* 17, 18, 19. *F. N. B.* 117. *D.*

Ld. *Raymond* 340.

So where there are two joint Merchants, and one of them dies, the other ſhall have Account againſt their Factor, without the joining of the Executor of the Deceaſed.

If

If there be ſeveral Owners of a Ship, and they fall out, the Ship notwithſtanding this Variance may make one Voyage upon their common Charge and Adventure, before ſuch time as they ſhall be ſo much as heard to diſſolve the Partnerſhip; but if after that they cannot agree, he who deſires to be free, is to offer to the reſt his Part, at a Price as he will either give or take; which if he will not do, and yet refuſes to ſet the Ship forth with the reſt of the Owners or Partners, then may rig the Ship at their own Charge, and upon the Adventure of the Refuſer, ſo far as his Part doth extend, without any Account to be made unto him of any part of the Profit at her Return. But they are bound to bring her home ſafe, or to anſwer him the Value of his Part: But if the Perſons Partners, who have the greateſt Share or Part of the Ship, refuſe to continue the Partnerſhip, with one who hath but one Part, or a ſmall Share in the Ship, who cannot ſell or part with his Part at a Price ſet, without great Loſs, nor is of Ability to buy their Parts, then are they all bound to put the Ship to an Appraiſement; and ſo diſpoſe of her by Sale, or ſetting her forth on the Voyage according to ſuch Appraiſement. And if for want of Buyers, the poor Partner can neither avoid the Oppreſſion of the richer, nor yet the Rich ſatisfy the poor Man, who alſo may be obſtinate and wilful, then may the Judge of the *Admiralty* ſentence or decree the ſame, as he may do in *Omnibus aliis bonæ fidei Actionibus*. *Lex Mercat.* 120, 121.

Lex Oleron, Partners of a Shipdiſagree.

In an Action upon the Caſe againſt *A.* the Plaintiff declares upon the Cuſtom between Merchants, *&c.* that if two Merchants are found in Arrear upon an Account, and they promiſe

Action againſt one when two promiſed.

promiſe to pay it at certain Days, that any or either of them may be charged for the whole ſingly; and then ſhewed the Account, that *A.* and *B.* were found in Arrear ſo much, *&c.* and promiſed to pay it at certain Days, but did not, and the Plaintiff brought an Action againſt *A.* only and reſolved that it lay. 2 *Rolls Abr.* 702, 703.

Salk. 126. If two Merchants have a joint Trade, and one of them accept a Bill of Exchange, if he do not pay it, an Action lies againſt the other, *per Twiſden*, Styles 370. but rather againſt both.

Martin v. Boure. Cr. Ja. 7. XV. And as the Law eſtabliſhes Security for their Eſtates, ſo it gives them other Immunities in their Commerce; for if one Merchant draws a Bill of Exchange upon another, be it In-Land or Out-Land, (if it be by way of Exchange) the Acceptance of the Bill by the Party ſhall bind him to that Party, to whoſe Uſe the Money in the Bill is to be paid, and he may bring his Action in his own Name, *per Legem Mercatoriam.*

Vide tit. Exchange. Lutw. 891. b. And ſo it is, if a third Perſon, that is a Stranger to the Bill, ſhall accept the ſame *for the Honour of the Drawer*, it ſhall bind him as effectually, as if he, upon whom the Bill was drawn, had accepted it; and this by the Cuſtom of Merchants.

Ld. *Raymond* 281. And Courts of Law will take notice of general Cuſtoms among them, without being pleaded; as that there is no Right of Survivorſhip, *&c.* but not of Special Cuſtoms.

Merchandize is ſo univerſal and extenſive, that it is in a manner impoſſible, that the Municipal Laws of any one Realm ſhould be ſufficient for the ordering of Affairs and Traffick relating to Merchants. The Law concern ing

cerning Merchants is called the Law Merchant from its univerſal Concern, whereof all Nations do take ſpecial Knowledge, and the Common and Statute Laws of *England* take notice of the Law Merchant, and leave the Cauſes of Merchants in many Inſtances to their own peculiar Law. As in the 13 *Ed.* 4. 9, 10. A Merchant-Stranger made Suit before the King's Privy Council, for certain Bails of Silk feloniouſly taken from him, wherein it was moved, that this Matter ſhould be determined at Commou Law; but the Lord Chancellor anſwered, that this Suit is brought by a Merchant, who is not bound to ſue according to the Law of the Land, nor to tarry the Trial of twelve Men. And it was there likewiſe reſolved by all the Juſtices, that if the Merchandizes of ſuch a Merchant-Stranger be ſtolen and waved by a Felon, the King himſelf ſhall not have them as Waifs; otherwiſe of the Goods of a common Perſon. *Vid.* 27 *Ed.* 3. *cap.* 20.

In War, Merchants in an Enemy's Country are privileged from any Violence to be offered them, *Grot. de Jure belli & pacis, lib.* 2. *cap.* 11. *ſect.* 12.

There are likewiſe (for the Accommodation of Commerce and Traffick) in all Countries, privileged Ships and Boats ſerving the Country or the Prince; which have great Prerogatives of being free of Impoſts and Cuſtoms, and not ſubject to Arreſts. And all Ships are ſubject to this Service upon Command, and if they refuſe, the Ships are forfeited, by the Law *Maritime, Lex Mercat.* 110, 111.

If a Merchant commit any Offence, for which he is to be amerced, this Amercement ſhall be *Salva Merchandiza ſua.* For that

Trade and Traffick is the Livelihood of a Merchant, and the Life of the Commonwealth, wherein the King and every Subject hath an Intereſt. *Magna Charta, cap.* 14. 2 *Inſt.* 28.

By the Statute of the 5 *H.* 4. *cap.* 7. Merchants Alien ſhall be uſed in this Realm as Denizens be in others.

To call a Merchant Alien Bankrupt is actionable. *Tarloot cont. Morriſon. Yel.* 198. 1 *Bulſt.* 134.

A Man delivered Kerſies to be ſold in *Spain*, the Factor ſells to one who becomes a Bankrupt, and it is a Law in *Spain*, that if the Factor enter it before a Regiſter, and had a Teſtimonial that he ſhall be diſcharged. And the Court ſaid we will judge here, that he ſhall be diſcharged. 2 *Rolls Rep.* 497. *Caps* and *Tucker.*

Debt upon a Bill by a Merchant to pay Foreign Coin amounting to ſo much, to be paid upon the Feaſt of the Purification called *Candlemas-day.* Upon *non eſt factum* pleaded, *Verdict* for the Plaintiff. Moved in Arreſt of Judgment, that the Declaration was not good, becauſe Payment at *Candlemas* is not known in our Law; yet the Judgment was affirmed, for that amongſt Merchants ſuch Payment is known to be on the 20th of *February*, and the Judges ought to take notice of it, being uſed among Merchants, for the Maintenance of Traffick, *Yel.* 135. 1 *Brow.* 103. *Perniſon* and *Pountney*'s Caſe.

Dyer 296, 375. XVI. All other Subjects are reſtrained to depart the Realm, to live out of the Realm and out of the King's Obedience, if the King ſo thinks fit; but Merchants are not, for they may depart, and the ſame is no Contempt,

tempt, they being excepted out of the Statute of 5 *R.* 2. *cap.* 2. And by the *Common Law* they might paſs the Seas without Licence, though not to merchandize.

XVII. It was once conceived, that thoſe Laws, which were prohibitory againſt Foreign Goods, did not bind a Merchant-Stranger; but it was ruled otherwiſe: For in the Leagues that are now eſtabliſhed between Nation and Nation, the Laws of either Kingdom are excepted; and therefore as the *Engliſh* in *France*, or in any other Nation in Amity, are ſubject to the Laws of that Country where they reſide; ſo muſt they of *France*, or any other Country be ſubject to the Laws of *England*, when Reſident here; and therefore if a *Frenchman* imports any Points, Laces, Belts, Hats, and the like, they are forfeited.

19 *H.* 7. *Tomlinſon qui tam verſ. Henry de Vale. Paſch.* 36 *Eliz.* in the *Exchequer*.

XVIII. The marking of Goods is of a great Conſequence, as in relation to the ſettling the Property of the Merchandize in the right Owner; and in Courts of Juſtice, both the *Civil Law* and the *Common Law* hath a great Reſpect to the ſame, therefore the Uſe has been, that every particular Merchant hath his particular Mark appropriated to him; by which means, if the Perſon is of any Value conſiderable, as in relation to Commerce, his Mark is preſently known.

Every Merchant is to ſet down his Mark upon his Book of Accompt, wherewith his Commodities are marked; ſo Companies and Societies have their particular Mark: No Merchant ought to uſe another Mark, without Leave firſt had of the Party whoſe Mark the ſame is; for as Flags are the Enſigns that give Conuſance of the Nation whoſe Ships they are, ſo Marks are to aſcertain the Owners

The Cutlers of *London* do give to each Member a particular Mark, which cannot be uſed or appropriated, without a particular Order and Leave of the Company

and Party, and so other Companies, 2 *Cro. fol.* 471.

ers of their Property without Confusion or Damage: And though to set the Mark of another Man alters not the Property, yet it may work such a Detriment as may be very mischievous; and therefore by the *Common Law* of *England*, if *J. S.* shall maliciously set the Mark of *J. D.* upon his Goods, to the Intent *J. D.* shall or may be brought into any Trouble, or put to any Damage or Charge, an Action of the Case will lie against *J. S.*

Ld. *Raymond* 271. 3 *Salk.* 390.

The Property of Goods is in the Person to whom the Bill of Lading is consigned, and he may assign it over. But if the Bill be special, as to deliver to *A.* to the Use of *B.* the Property is in *B.*

CHAP. VIII.

Of Factors.

I. *Factors, their Qualifications generally considered, in reference to their Employment.*

II. *Of Commissions, and the Words in the same, that qualify them in their Employment.*

III. *Of Commissions to Factors that limit their Actions.*

IV. *Of a Factor that deals for several Merchants, of the Obligations that oblige, and not oblige, each other.*

V. *Of their Power, considered in reference to the dispensing with the Debtors of their Principals.*

VI. *Where the false Entry, or Unfaithfulness of the Factor subjects him to answer Damage to his Principal; and of the like committed by the Principal, where to answer to the Factor.*

VII. *Of Goods remitted to Factors, and lost in their Possession who bears the Misfortune.*

VIII. *Bills of Exchange drawn on the Factor by the Principal, and accepted, but before Day of Payment*

ment the Principal becomes Bankrupt, whether the ſame muſt be paid.

IX. *Of Freighting of Ships by a Factor, where he is obliged to ſee the ſame diſcharged.*

X. *Of the general Rules to be uſed touching the Conſtruction of their Actions.*

I. A FACTOR is a Servant, created by a Merchant's Letters, and taketh a kind of Proviſion called Factorage, ſuch Perſons are bound to anſwer the Loſs, which happens by over-paſſing or exceeding their Commiſſion; but a ſimple Servant, or an Apprentice, can only incur his Maſter's Diſpleaſure. The *Spaniard* hath a Proverb, *Quien paſſa Commiſſion, pierde Proviſion: He that exceeds his Commiſſion, ſhall loſe his Factorage.* But Time and Experience hath taught them to know better Things; for now it is, *Subolca la paga, His Purſe muſt pay for it.* The Gain of Factorage is certain, however the Succeſs of the Voyage proves; and it is the Prudence of Merchants to chuſe honeſt and induſtrious Perſons, for otherwiſe the Factor may grow rich, and the Merchant poor, the firſt being ſure of his Reward, the latter uncertain of his Gain.

II. In Commiſſions they now generally inſert theſe Words: *Diſpoſe, do, and deal therein, as if it were your own*; by which the Actions of the Factor are to be excuſed, though it turns to his Principal's Loſs, becauſe it ſhall be preſumed he did it for the beſt, and according to his Diſcretion.

He is barely a Truſtee for his Principal; therefore if his Principal, having Goods in his Hands, owes him Money by ſimple Contract, and then dies indebted by Specialty

more than his Aſſets are worth, the Factor cannot retain the Goods.

III. But bare Commiſſion to a Factor, to ſell and diſpoſe, will not enable him to truſt, or give further Day of Payment; for in the due Execution of his Authority, he ought on a Sale to receive *quid pro quo*, and as he delivers one to receive the other; for otherwiſe by that means, as they may truſt ſix Months, they may truſt ſixteen Years: Nor by the Virtue of that Clauſe, of *doing as if it were their own*, may they truſt out to an unreaſonable Time, as ten or twenty Years inſtead of one, two or three Months, which is the cuſtomary Time for the like Commodities; and ſo it was adjudged, where one had remitted Jewels to his Factor in *Barbary*, who diſpoſed of the ſame to *Mulleſhack* the Emperor, for a Sum certain to be paid at a time, which being elapſed, the Factor not obtaining it, was forced to make the ſame good to his Principal.

7 Jac. B. R. Rot. 416. Barton & Saddocks. Bulſt. 1. part. 103. Yelv. 202. 2. Mod. 100, 101

IV. Again, one and the ſame Factor may act for ſeveral Merchants, who muſt run the joint Riſque of his Actions, though they are mere Strangers to one another; as if five Merchants ſhall remit to one Factor five diſtinct bales of Goods, and the Factor makes one joint Sale of them to one Man, who is to pay one Moiety down, and the other at ſix Months End; if the Vendee breaks before the ſecond Payment, each Man muſt bear an equal Share of the Loſs, and be contented to accept of their Dividend of the Money advanced.

But if ſuch a Factor draws a Bill of Exchange upon all thoſe five Merchants, and one of them accepts the ſame, the others ſhall

Salk. 126.

ſhall not be obliged to make good the Payment *Tamen quære de hoc.*

V. And as the Authority and Truſt repoſed in Factors is very great, ſo ought they to be provident in their Actions for the Benefit of their Principals; and therefore if Factors ſhall give Time to a Man for Payment of Monies contracted on Sale of their Principals Goods, and after the Time is elapſed, they ſhall ſell Goods of their own to ſuch Perſons for ready Caſh (leaving their Principals unreceived) and then ſuch Man break, and become inſolvent, the Factor in Equity and Honeſty ought to make good the Loſſes, for they ought not to diſpenſe with the Non-payment of their Principals Monies, after they become due, and procure Payment of their own to another Man's Loſs; but by the Laws of *England* they cannot be compelled. *Heath verſus Turner. Winch* 2456.

VI. Yet if Goods are remitted to a Factor, and upon Arrival he ſhall make a falſe Entry at the Cuſtom-houſe, or land them without the Cuſtomer, whereby they ſhall incur a Seizure or Forfeiture, whatſoever the Principal is endamaged, he muſt inevitably make good, nor will ſuch general Clauſe help him as above: But if a Factor makes his good Entry, according to the Envoice, or his Letter of Advice, and it falls out the ſame are miſtaken, if the Goods ſhall be loſt, yet the Factor is diſcharged. *Leviſon v. Kirke, Lane*

And as Fidelity, Diligence and Honeſty are expected from the Factor, ſo the Law requires the like from the Principal, judging the Act of one to be the Act of the other; and therefore if a Merchant ſhall remit counterfeit Jewels to his Factor, who ſells and diſpoſes them for valuable Conſiderations, as

if

if they were right, if the Factor receives any Loss or Prejudice thereby, by Imprisonment, or other punishment, the Master shall not only make good the Damage to the Factor, but also render Satisfaction to the Party damnified: And so it was adjudged, where one *How* was possessed of three counterfeit Jewels, and having Factors in *Barbary*, and knowing one *Southern*, a Merchant, was Resident on the Place, consigns those Jewels to his Factor, who receiving them, intreated *Southern* to sell those Jewels for him, telling him that they were good Jewels; whereupon *Southern*, not knowing they were counterfeit, sold them to the King of *Barbary* for eight hundred Pounds (they being worth really but one hundred Pounds) and delivered the Money to the Factor, who remitted the same to *How*; the King of *Barbary* not long after finding himself cozened, committed *Southern* to Prison till he repaid the eight hundred Pounds. Whereupon *Southern* coming for *England*, brought his Action against *How*, and had Judgment to recover his Damage; for the Principal shall answer for his Factor in all Cases where he is privy to the Act or Wrong: And so it is in Contracts, if a Factor shall buy Goods on the Account of the Principal (especially if he has used so to do) the Contract of the Factor will oblige the Principal to a Performance of the Bargain.

2 *Rolls* 5.
2 *Cro.* 468.
Bridgman 126, 127.
Popham. 143, not resolved in that Book.
Soame's Case, *Goldsbr.* 137.

VII. When Factors have obtained a *Provenue* or Profit for their Principal, they must be careful how they dispose of the same, for without Commission or Order they must be responsible. Goods remitted to Factors ought in Honesty to be carefully preserved, for the Trust is great that is reposed; and there-

therefore a Factor robbed, in an Account brought againſt him by his Principal, the ſame ſhall diſcharge him *. And ſo it is, if a Factor buys Goods for his Principal, which afterwards happens to be damnified, the Principal muſt bear the Misfortune: But if a Factor ſhall diſpoſe of the Goods of his Principal, and take Money that is falſe, he ſhall there make good the Loſs; yet if he receives Monies, and afterwards the ſame is by Edict or Proclamation leſſened in Value, the Merchant, and not the Factor, muſt there bear the Loſs.

* *Southcote's* Caſe, 4 *Cok.* 84.

Again, in Letters of Credit, the Factor muſt be ſure to ſee, whether the Commiſſion is for a Time certain, or to ſuch a Value, or not exceeding ſuch a Sum, or general, in which he muſt have a careful Eye.

Where the Factor defrauds a State of the Cuſtoms, which is there a capital Crime in the Factor, and a Forfeiture of the Freight, he ſhall have the Benefit of the ſaving.

1 *Cha. Ca.* 25.

But if the Cuſtoms were due to our King, he is bound to diſcover them on a Bill brought.

1 *Cha. Ca.* 30.

VIII. A Merchant remits Goods to his Factor, and about a Month after draws a Bill on him, the Factor having Effects in his Hands, accepts the Bill, then the Principal breaks, againſt whom a Commiſſion of Bankrupt is awarded, and the Goods in the Factor's Hands are ſeized; it has been conceived, the Factor muſt anſwer the Bill notwithſtanding, and come in a Creditor for ſo much as he was enforced by reaſon of his Acceptance to pay.

Quære, If Equity may not relieve in ſuch Caſe.

IX. If a Factor enters into a Charter-party with a Maſter for Freightment, the Contract obliges

obliges him; but if he lades aboard generally the Goods, the Principals and the Lading are made liable, and not the Factor for the Freightment.

The Principal orders his Factor, that as ſoon as he hath loaded (he having Monies in his Hand) to make an Aſſurance on the Ship and Goods, if the Ship happens to miſcarry by the Cuſtom of Merchants, he ſhall anſwer the ſame, if he hath neglected his Commiſſion; ſo it is, if he having made an Aſſurance, and Loſs hath occurred, he ought not to make a Compoſition without Orders from his Principal.

X. Generally the Actions of Factors do depend on Buying, Selling, Freighting, and all other the Heads that have been treated in the ſecond Book, by which their Employment is univerſal in Matters Maritime and of Commerce; and the Queſtions which would ariſe touching the ſame, if treated on, would be *in infinitum:* However, theſe are to be the Standard *Rules* which ſhould govern their Actions, *viz.* Honeſty, Faithfulneſs, Diligence, and obſerving of Commiſſion, or Inſtructions, which being conſidered, and weighed by thoſe that ſhall be Judges of their Actions, a right Underſtanding and determining of the Matters ariſing between them and their Principals, would ſoon be attained.

But thoſe ſorts of Factors that have wanted thoſe things, ſeldom or never render any other Account, but long and tedious Chancery-Suits, by which they not only have endamaged their very Trade, but ſeek to marry their Principals to a double Affliction, by obliging them to ſue either a Beggar, or that which is worſe, a naughty Man.

On

On the other hand, Factors, that behave themſelves worthily and prudently in the Service of their Principals, ought, after their tedious Service, to be numbered amongſt thoſe that juſtly challenge that worthy Denomination of *Merchant:* And ſuch was he who never made Breach of Commiſſion in the Service of his Principal, but once; that was, when Wines were committed to him to diſpoſe of, but the Price (by reaſon of a Glut) fell, Advice being given to the Principal of the ſame, who immediately in Paſſion writes to his Factor to take a Hammer and knock out the Heads; but the Factor conſidering (that Leave muſt be given to Loſers to ſpeak) knew better things, and kept the Goods, and ſold them for their full Value; and when Accompts were to be made, inſtead of bringing to the Accompt of Wines, their Heads knocked out *per Order*, worthily brought *per contra*, ſold at their intrinſick Value. Such faithful Miniſters, I ſay, juſtly deſerve that of our Saviour, *Well done*, &c. and to be no more called Factors, but Merchants.

CHAP.

CHAP. IX.

Of the Laws of Nature and of Nations.

I. *Of the Variety and Contrariety of human Actions, and from whence they ſpring.*
II. *Of the Difficulties that happen in the obſtructing our Inquiſition in finding that which is lawful.*
III. *Human Laws from whence they flow, and wherefore the Laws of Nature are above ours.*
IV. *No man naturally more a Judge than another of Nature's Laws.*
V. *Nature's Laws are inſtituted for inward Goodneſs and Virtue, but State-laws for Quiet and Repoſe.*
VI. *Of Puniſhment required by Kings againſt thoſe that violate the Laws of Nature or Nations, though the ſame touch not them, nor their Subjects, and of puniſhing an Equal.*
VII. *Of puniſhing an Equal, where that Right fails, and the Reaſons of the ſame.*
VIII. *Subjects ought not to ſeek Juſtice in the Territory of another Prince, but in their own, unleſs the Defendant become Fugitive.*
IX. *Of Kingdoms equal in Power cannot be commanded, but entreated may be, to execute the Judgment of another by the Law of Nations.*
X. *That ſuch Power of executing the Judgments or Decrees of any Foreign Nation, extends not to thoſe of Life or Honour.*
XI. *Of executing the Judgments given in a Kingdom abſolute, in another that is annexed by Conqueſt; and of the Difference of that, and one by Union.*
XII. *Where that Right fails in Plantations, and the Reaſon of the ſame.*

I. PLAIN Reaſon ſhews us, that Natural and Mathematical Cauſes have more Certitude than Civil; for Nature is always uniform and alike in its Operations. Hence Fire always burns, and never wets; a Stone

Stone in the Air naturally tends downwards, and never ſtays in the middle. In Mathematical Cauſes, ordinarily the Forms are ſuch as have no middle interpoſed, as between even and odd there is no *medium participationis*; between a right Line and a crooked, there is no middle ſort of Line; thus two and two always make four.

II. But civil and human Actions proceeding from a mutable and various Principal (the Will*) cannot always be alike or uniform: And beſides the Will within, human Actions without, are ſubject to different Circumſtances, and to infinite Encounters; by reaſon of which their exceſſive Number, they cannot be foreſeen while Men are making Laws: Hence we may underſtand, wherefore it is ſaid, *Omnis definitio in jure eſt periculoſa*; and that *ſummum Jus* at ſome time may be found *ſumma Injuria*; as to render a Man his Sword, when he is actually mad, *&c.* And as Circumſtance hath Power to change the Matter, ſo in the Form of the Action, it leaves in the middle a Latitude, ſometimes inclining to one Extreme, ſometimes to another.

* *In quid naturale ſit ſpectandum in his quæ bene ſecundum naturam ſe habent, non in depravatis*, Ariſt. Polit. 1. 5.

For Example, betwixt that which by Precept we are commanded ever to do, and that which we are commanded never to do, is placed that which is lawful for us now and then to do, or not to do, in Matters of our own Right, ſo far as they ſeem expedient, or not expedient for us: Thus *Joſeph* is called a juſt Man, becauſe he thought of divorcing himſelf from *Mary*, though upon Circumſtances he would not, *&c.* But that which perplexes us all here is, that this *licitum* leans ſometimes more to the one hand, ſometimes more to the other, ſometimes more to that which

Non ideo id Deum velle, quia juſtum eſt, ſed juſtum eſſe (that is due in Law) *quia Deus voluit.* Anaxarchus apud Plutarchum in Alexandro.

which is abſolutely bad; from whence grow Scruples and Doubtings, whether in ſuch Twilight we really participate more of Light than of Darkneſs; that is, more of Good than of Bad.

III. Human Laws grow moſt out of theſe middle things, *ex mediis licitis*; and upon right Examination we find, that a Man hath nothing elſe to diſpoſe, for we (poor ſubordinate Veſſels) cannot ſo much as deliberate *de abſoluté debitis*, and *abſoluté illicitis*, for they were in force before Man, Prince or People were in being, and God himſelf cannot now alter them, they flowing intrinſically, either from his Sanctity, Wiſdom and Juſtice, as he is a Creator and Governor; or elſe they flow from Nature, whoſe Rule (according to God's making it by that which is in himſelf) is right Reaſon and Honeſty. This Uprightneſs of Nature, together with that Obligation we have to be ſubject to it, was not a Moment after us, and therefore we could not determine any thing about it; for which Cauſe we have not a legiſlative Power to alter or diminiſh any of Nature's Laws.

Vaſqu' 11. *Controv.* 54. 4.

Grotius de Jure Belli ac Pacis, l. 1. *c.* 1. §. 14.

IV. St. *Paul* tells us of thoſe *who, without any After-knowledge of God's revealed Will or Laws to Man, were condemnable by thoſe of Nature alone in the puniſhing the Breakers thereof.* No Man is naturally more a Magiſtrate than another, otherwiſe what meant *Cain*, when after his Murder he cried, *Whoſoever ſhall find me, will kill me?*

V. And though human Laws remember us of thoſe things, yet it is not as if they gave their original and primary Force of obliging; yea, Reaſon of State is not buſied ſo much about inward Piety and Virtue, as it is about publick

publick Quiet and Repoſe, or thoſe Actions which regard another Man's receiving right or wrong: And hence it is, that great Prodigality is not ſo ſeverely puniſhed as a little Robbery; and that *malus homo poteſt eſſe bonus Civis*, the Reaſon is, becauſe though he may do himſelf Wrong in his own Rights, yet he may always do other Men right in theirs; neither is there any clear Reaſon, wherefore thoſe leſſer Sins and Impieties ſhould be puniſhed by any but God, who is wiſeſt to know them, juſteſt to weigh the Merit of them, and powerfulleſt to puniſh them.

This is the State of God's, and of Nature's Laws, to which we are all equally obliged; but our floating and circumſtantiated Laws are only to give a Rule for an equal and mutual Community in Things, which God and Nature gave us to diſpoſe of as we would ourſelves.

VI. Hence it is, that Kings, and ſuch as have equal Power with Kings, have a right to require Puniſhment, not only for Injuries committed againſt themſelves or their Subjects, but for them alſo that do not peculiarly touch themſelves; as where Perſons commit Actions in Violation of the Law of Nature or of Nations, for the Liberty by Puniſhments to provide for human Society (as hath been already mentioned) was in the Hand of every Man; but after Commonwealths and Courts of Juſtice were ordained, it reſided in the Hands of the higheſt Powers, not properly as they are over others, *but as they are under none:* For Subjection to others has taken away that Right; yea, ſo much more honeſt it is to vindicate other Men's Injuries than our own, by how much more it is to be feared, that a Man in his own, by two deep a Reſent-

Grotius de Jure Belli ac Pacis, lib. 2. cap. 21.

ment, may either exceed a Meaſure, or at leaſt infect his Mind; however, this Right of puniſhing an Equal remains ſtill in thoſe Places where the People remain as in great Families, and not in Cities, or under ſome Government; and therefore thoſe that have now Poſſeſſions of any Parts of the New World, or *American* Iſles, till they have either voluntarily ſubmitted to a Government, or put them and their Diſcovery into the Hands or Protection of ſome Prince that may exerciſe Power, there remains the old and natural Right of puniſhing for Offences: So likewiſe where Perſons ſhall be aſſaulted by Pirates on the Seas, if they be overcome, they may be immediately executed by the Law of Nature; for otherwiſe there would be a Failure of Power to puniſh ſuch: Beſides, the old natural Liberty remains in all Places where are no Judgments; ſo where they are taken and brought to a Port, and the Judge openly refuſes the Trial of them, or that the Trial of them cannot be had, without an apparent Detriment and Loſs to the Captors, Juſtice may be done upon them by the Law of Nature.

Vide Chap. Piracy, §. 11, 12.

Leg. extant. D. quod metus.

VII. Two Pirates reſolving to aſſault and rob the next Veſſel they meet with, (not knowing each other's Condition or Deſign) encounter, and the one happens to be overcome by the other; the Queſtion is now, whether the above-mentioned Right ſo far remains, as that the ſtronger may execute him whom he hath overcome: Right Reaſon dictates, that the Evil-doer may be puniſhed, not who ſhould puniſh him; but that Nature ſufficiently ſheweth, that it is moſt convenient to be done by him that is ſuperior; yet doth it not demonſtrate this to be neceſſary, except ſuperior

Qui non reddit faciendo quod debet, reddet patiendo quod debet, Philo. *Peccare dum feſtinatis, ad pœnas ferendas feſtinatis.*

rior be taken in that Senſe, that the Evil-doer be thought to have made himſelf thereby inferior to any other, and to have it as it were degraded himſelf from the Order of Men into the Number of Beaſts ſubject to no Man, and ſuch are Pirates, who have no other Denomination but Night-wolves, or Beaſts of Prey. By Nature it is ordained, *That the better command the worſe:* And *Ariſtotle* ſaith, *The worſe are provided for the Uſe of the better, as well in Naturals as in Artificials.* It follows hence, that at leaſt a guilty Perſon ought not to be puniſhed by another equally guilty, to which Purpoſe is that Saying of Chriſt, *Whoſoever of you is without Sin* (that is ſuch Sin) *let him throw the firſt Stone.* Pertinent is that ſaying, *The Sentence can have no Authority, where he that judgeth is to be condemned:* From whence it follows, that the right of puniſhing in ſuch Caſe, at ſuch time ceaſes. *Ariſt. 7. Pol. 14.*

VIII. On the other hand, Subjects that have juſt Cauſe of Action, and inhabit under their own Sovereign, ought not to wave his Juſtice, and fly into the Territory of another, but ought to ſeek it in their own, unleſs the Defendant becomes Fugitive. One *Richard Hieron* being a Merchant of *London*, and Liege-man of the King, and born in *England*, commenced a Suit againſt *J. Walden* Major of the Staple of *Calis*, and other Merchants of the Staple, and cauſed them to be arreſted in *Flanders* in the Court of the Duke of *Burgundy*, held in *Bruges*, for certain Injuries ſuppoſed by them to be made within the Juriſdiction of the King of *England* at *Calis*, and after the Defendants did appeal to the Parliament at *Paris*, and were there diſmiſſed by a Judicial Sentence, for that they had no Cog-

nizance or Ground to inquire or examine Matters committed within the Juriſdiction of the King of *England*, and by his Subjects there inhabiting in a Foreign Court; the Record does make mention, that this was an Act ſo derogating from the Law, and of ſo high a Contempt, that it was enacted, "*Quæ brief de Proclamation iſſera, luy commaundant a ſurceaſar ſon dit action, & que s'il ni apres ſue les dits Defendants hors del Realm d'Angleterre per aſcun matter determinable*", under the Juriſdiction and obedience of the King of *England*, *qu'on il ad juriſdiction*. The Judgment given——*donque il ſerra*, &c. he ſhall be put out of the Protection of the King of *England*, and forfeit all his Lands, Tenements, Goods and Chattles, and that no Pardon ſhall be to him available.

Rot. Parl. 17 *E.* 3. *num.* 26. cited in Rolls Abridgment *tit.* Prerogative, *fol.* 176.

IX. Yet Kingdoms which are equal in Power, and having no Dependance on each other, cannot be commanded nor corrected of another; but if there be a Queſtion, to execute the Decree or Judgment of one in the Territory of the other, there may iſſue forth a Commiſſion of Entreaty under the Seal of that Court where the Judgment was given, or at leaſt under the Great Seal of the Prince, directed to the Judges in that Place where the Defendant is reſident, and the Judge to whom the ſaid Commiſſion is directed may award Execution, according to the Laws of Nations: And ſo it was adjudged, where one having recovered a Debt before the Governor of *Frieſland*, the Defendant upon that fled for *England*, the Governor, at the Requeſt of the Plaintiff, iſſued forth his Commiſſion of Requeſt, directed *Omnibus Magiſtratibus infra Regnum Angliæ*, *rogans*, to make Execu-

Ro. Ab. 530. *Lev.* 267. *Sid.* 418. *Ven.* 32. 2 *Keb.* 511, 610.

Execution of the ſaid Judgment; upon which the Judge of the Admiralty in *England* iſſued forth an Execution of that Sentence, and the Defendant was taken, upon which he brought his *Habeas Corpus*, and adjudged the Sentence well executed by the Laws of Nations, and according to the *Common Law* of this Realm. *v.* Lord *Raymond*'s Rep. 935, 936.

So likewiſe, if a *Dutchman* takes up Goods at the Port of *London*, and gives a Note under his Hand for the Payment of the ſame, and then flies into *Holland*, the Vendor may apply himſelf to the *Lord-Mayor of London*; and upon Proof of the Delivery, and the Sale of the Goods, the *Lord-Mayor* making a Certificate of the ſame, and ſending it under the City-Seal, directed, as above, they of *Holland* will and do execute the ſame upon the Party.

Herein this laſt Caſe differs from the firſt; for by the former, if there ſhould fall a Queſtion about the Interpretation of the Judgment or Sentence, the ſame cannot be done, for they are not to examine the ſame; and the Reaſon is, leſt the Stranger be induced at another time to do the like, and ſo diſſolve the Judgments whereof they ſhould demand the Execution, the which would be done more through Jealouſy of the State, than for any Injuſtice in them: Beſides, the Judgments or Sentences, which are Matters of Record, and of the greateſt Security in a Kingdom, the Preſumption that they were juſtly given, ſhall always be underſtood.

X. But in the latter, the ſame may be examined, that is, the Merchant may be heard as to his legal Defence, either to the leſſening or diſcharging the Debt or Damage, but againſt the Teſtimony certified, no Objection

can be made, but the ſame is admitted, as legally proved.

Criminal proceed. But if there be a Queſtion of Honour or Life, there they may not execute the Judgments of foreign Judges, eſpecially if they have not known the Merit of the Cauſes, or ſeen the Informations, or heard the Witneſſes; but more eſpecially in *England*, for there can in no reſpect whatſoever the Life of a Man (let his Offence be never ſo heinous) be brought to Puniſhment without a legal Trial, * and that by the producing of Witneſſes *viva voce* to his Face; yet Princes for the Reſpect they bear each other, and for the good of Juſtice, though they cannot at the bare Requeſt of the Judges of another Prince put them to Death; yet they may for exemplary Puniſhments (which ought to be made upon the Places where the Fact was committed) yield the natural Subject to his natural Prince, unleſs the Prince, to whom the Fugitive is fled, finds that he is unjuſtly purſued; for in ſuch Caſes he is not bound to yield them; yea, he is forbidden by the Law of God to reſtore a Bond-man, which is fled into another Man's Houſe to avoid the Fury of his Maſter.

* *Cok.* 4. *Inſtit. fol.* 38.

Soto de Juſt. & Jure, l. 5. *qu.* 1. *Art.* 7. *Satius judicamus eſſe paucos aliquos mala ferre, quam immenſam multitudinem,* Zonaras.

Ireland XI. And as the ſame is in Caſes Foreign, ſo likewiſe in thoſe Eſtates that are under the *Crown of England*; and therefore if a Man recovers againſt * *J. S.* in the *King's Bench* in *England*, and then the Defendant flies over into *Ireland*, the Judgment may be certified over into the *Chancery* in *Ireland*, and they may by *Mittimus* ſend it into the *King's-Bench* there, and they may award Execution, or otherwiſe the Party may bring his Action of Debt on the ſame; ſo the like has been done for Decrees given in the *Chancery* in *England*, which

* *Paſch* 24. *Car.* 2. *in B R. in Hibern. inter Warde* and *Moor.*

which have been exemplified under the Great Seal, directed to the King's Lieutenant, for the putting the ſame in Execution there; but in no Caſe a Judgment given in *England* may be certified over under any other Seal but that of the Great one.

But in *Scotland* it is otherwiſe; for that is a Kingdom abſolute, and not like *Ireland*, which is a *Crown* annexed by *Conqueſt*, but the other is by Union; and tho' they be united under one Prince *ad fidem*, yet their Laws are diſtinct, ſo as if they had never been united; and therefore the Execution of the Judgments in each other, muſt be done upon Requeſt, as above, and that according to the Laws of Nations.

Vide the Act of Parliament for the Union of *England* and *Scotland*.

XII. But *Colonies* or *Plantations*, which are reduced into the Condition of great Families, have not this Right of Requeſting, for they are governed by the Laws * preſcribed by the Sovereign of the ſame, who may ſet Juriſdictions, and make them Places privileged, not to have the Perſons attached or arreſted in any other Places, but within their own Bounds, ſo likewiſe upon their firſt forming or Inſtitution, may ſo declare, that for any Debt or Contract made or done in any Place but in that of the ſame *Plantation*, they ſhall not be impleaded; and therefore in *Virginia* at this Day, if a Man contracts a Debt in *England*, and flies to the ſame, he cannot be there impleaded: But if a Man takes up Goods, and carries the ſame over thither, there may be ſued in the Place; ſo likewiſe if it can be proved he carried over the Money borrowed, and this amongſt others of the Laws and Conſtitutions of thoſe *Plantations*, is preſerved inviolably, the ſame being as it

* *See Contra* 2. *P. W.* 75. *Engliſhmen* carry their Laws with them.

were a Pledge and general Safety, which is given to thoſe Inhabitants that ſhall reſort thither, and there plant themſelves for the Good of the Place; and although thoſe that thither fly, by reaſon of great and unreparable Loſſes, have contracted Debts far beyond their Ability to ſatisfy, a Failure of which in Strictneſs of Law, may (if the Creditor pleaſes) oblige their Bodies to Impriſonment; yet doth it not thence follow, that the ſame ought to be exacted; for though the Body of Man may gratify the Revenge of the Creditor, yet it never can pay the Debt; wherefore if thoſe Ends by themſelves in a moral Eſtimation be not neceſſary, or if other Ends on the oppoſite Part occur, not leſs profitable or neceſſary, or if the Ends propoſed by Impriſonment may be attained any other way, it will then follow, that if there be nothing of Obligation on the Debtor's Part, to render himſelf a Priſoner to the Creditor, that then if the ſame can or may be avoided by flight, the ſame in Conſcience may be done, according to that of *Cicero*,

Ad Quintum Fract. 1. 21. *It was not fit perhaps to diſmiſs him being brought to Judgment, but that he ſhould be inquired after, and brought to Judgment, was not neceſſary.*

By Stat. 6 *Geo.* III. *c.* 12. It is enacted, that the Colonies and Plantations in *America* are dependent upon the Crown of *Great Britain*, and that the Parliament hath full Power and Authority to make Laws of ſufficient Validity to bind the Colonies, and People of *America*, Subjects of the Crown of *Great Britain*, in all Caſes whatſoever.

A TABLE

A

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